

Smith, Trent - Vol. I

0001 IN THE UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF TEXAS  
 3 JUAN ISIDRO ITZEP, et al.,  
 4 Plaintiffs,  
 5 -vs- No. SA-06-CA-0568-XR  
 6 TARGET CORPORATION, et al.,  
 7 Defendants.  
 8  
 9  
 10  
 11 VIDEO DEPOSITION OF TRENT SMITH  
 12 TAKEN ON BEHALF OF THE PLAINTIFFS  
 13  
 14 IN OKLAHOMA CITY, OKLAHOMA  
 15  
 16 ON AUGUST 27, 2007  
 17  
 18  
 19  
 20  
 21  
 22 CITY REPORTERS, INC.  
 23 117 PARK AVENUE, FIRST FLOOR  
 24 OKLAHOMA CITY, OKLAHOMA 73102  
 25 (405) 235-3376  
 0002 REPORTED BY: KIM GLOVER, CSR, RPR, RMR  
 1 A P P E A R A N C E S  
 2  
 3 FOR THE PLAINTIFFS:  
 4 R. CRAIG DEATS  
 5 Attorney at Law  
 6 DEATS, DURST, OWEN & LEVY  
 7 1204 San Antonio Street, #203  
 8 Austin, Texas 78701  
 9  
 10 WILLIAM H. BEARDALL, JR.  
 11 Attorney at Law  
 12 EQUAL JUSTICE CENTER  
 13 510 S. Congress Avenue, #206  
 14 Austin, Texas 78704  
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 16 FOR THE DEFENDANT TARGET:  
 17 SHANNON L. MILLER  
 18 DAVID T. WILEY  
 19 Attorneys at Law  
 20 JACKSON LEWIS  
 21 2001 Park Place North, #650  
 22 Birmingham, Alabama 35201  
 23  
 24 FOR JIM'S MAINTENANCE:  
 25 RICHARD A. PIZZO  
 26 Attorney at Law  
 27 1515 South Denver Avenue  
 28  
 29 Page 1

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22 Q Uh-huh. And when --  
 23 A -- for sale.  
 24 Q And when you say "we," who is "we"?  
 25 A Bryan Funderburgh is my partner.  
 0005  
 1 Q Okay. Have you ever had your  
 2 deposition taken before?  
 3 A Yes, a long time ago.  
 4 Q In what sort of circumstances?  
 5 A In Texas. I think I was probably 17.  
 6 There was a glass door exploded on me in Arlington,  
 7 and there was a lawsuit, trying to get the medical  
 8 expenses paid.  
 9 Q Okay. A personal injury claim?  
 10 A Yes.  
 11 Q Okay. So are you generally familiar  
 12 with the way a deposition works and the uses that can  
 13 be made of deposition testimony?  
 14 A Not -- no.  
 15 Q Okay -- well, do you understand that  
 16 you're here today testifying under oath?  
 17 A Yes.  
 18 Q And that, in some circumstances, at  
 19 least, the deposition testimony that you give today  
 20 could be used in court, in lieu of actual live  
 21 testimony.  
 22 Do you understand that?  
 23 A Yes.  
 24 Q If I ask you a question today and you  
 25 don't understand the question or you don't hear it,  
 0006 would you ask me to repeat or explain the question?  
 1 A Yes.  
 2 Q And, by the same token, if you don't  
 3 do that, can I assume that you at least felt that you  
 4 understood the question?  
 5 A Yes.  
 6 Q Now, you understand that you're here  
 7 today because of your former capacity with Jim's  
 8 Maintenance & Sons, Incorporated; right?  
 9 A Yes.  
 10 Q And did I correctly say the name of  
 11 the company?  
 12 A I -- yes.  
 13 Q Jim's Maintenance & Sons,  
 14 Incorporated?  
 15 A Yes.  
 16 Q And it sometimes went by Jim's  
 17 Maintenance?  
 18 A Yes.  
 19 Q And there was another name, Jim's  
 20 Commercial Cleaning Services?  
 21 A I'm not familiar with that one.  
 22 Q Okay. Now, prior to today's  
 23 testimony, have you and I met before?  
 24 A Yes.  
 25  
 0007  
 1 Q Do you recall about how long ago that  
 2 was?  
 3 A Two months.  
 4 Q And was that with the advice and  
 5 consent of your attorney?  
 6 A Yes.

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17 Tulsa, Oklahoma 74119  
 18 PHILIP HURTT  
 19 Attorney at Law  
 20 BRANCH, CONNER-HUETT & HURTT  
 21 1525 Southwest 89th  
 22 Oklahoma City, Oklahoma 73159  
 23 ALSO PRESENT:  
 24 ELENOR BRYANT  
 25 JOHN MYRICK  
 26 JUSTIN TULLIUS  
 27 JIM FUNDERBURGH  
 28 BRYAN FUNDERBURGH  
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 0003  
 1 S T I P U L A T I O N S  
 2 It is hereby stipulated and agreed by and  
 3 between the parties hereto, through their respective  
 4 attorneys, that the deposition of Trent Smith may be  
 5 taken on behalf of the Plaintiffs, on August 27,  
 6 2007, in Oklahoma City, Oklahoma, by Kim Glover,  
 7 Certified Shorthand Reporter within and for the State  
 8 of Oklahoma, pursuant to Notice.  
 9 It is further stipulated and agreed by and  
 10 between the parties hereto, through their respective  
 11 attorneys, that all objections, except as to the form  
 12 of the question and the responsiveness of the answer,  
 13 are reserved until the time of trial, at which time  
 14 they may be made with the same force and effect as if  
 15 made at the time of the taking of this deposition.  
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 0004  
 1 TRENT SMITH,  
 2 of lawful age, being first duly sworn, testified on  
 3 his oath as follows:  
 4  
 5 DIRECT EXAMINATION  
 6 BY MR. DEATS: would you, please, state your name?  
 7 A Trent Smith.  
 8 Q And your address and telephone number?  
 9 A 5921 Holzman, H-o-l-z-m-a-n, Avenue,  
 10 Choctaw, Oklahoma, 405-391-7648.  
 11 Q And what's the zip code there?  
 12 A 73020.  
 13 Q And is that a home address or a  
 14 business address?  
 15 A Home.  
 16 Q Okay. Are you currently employed?  
 17 A I work for myself.  
 18 Q Okay. And what sort of work do you  
 19 do?  
 20 A We own some rental property and try to  
 21 build duplexes --  
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18 A No.  
19 Q When did you first join the company?  
20 A I believe it was, maybe, 1999.  
21 Q And did you start out as an account  
22 representative or in another capacity?  
23 A Account representative.  
24 Q And who else was in the company at the  
25 time you joined? who was its president, if you know?  
0010  
1 A Jim Funderburgh.  
2 Q And beneath Jim Funderburgh, were  
3 there -- was there a vice-president?  
4 A I don't know.  
5 Q Okay, who are the other people -- or  
6 the other principals in the company?  
7 A Bryan Funderburgh.  
8 Q And what position did Bryan  
9 Funderburgh hold?  
10 A I don't know. It -- I wasn't part of  
11 that.  
12 Q Did he -- was he somehow related to  
13 the operations side of the business?  
14 A Yes.  
15 Q Okay.  
16 A Yes.  
17 Q And -- so we have Jim Funderburgh,  
18 Bryan Funderburgh, yourself.  
19 Q Were there others involved in  
20 operating the business on a day-to-day basis?  
21 A No.  
22 Q Okay.  
23 A I mean, there were many other people  
24 within the company, but those were --  
25 Q Okay.  
0011  
1 A -- the principals, I guess.  
2 Q Did you -- where was the company  
3 headquartered?  
4 A Harrah, Oklahoma. Harrah, Oklahoma.  
5 Q Okay. And, in headquarters office,  
6 approximately, how many employees did you have?  
7 A Five, including myself.  
8 Q And would that also include Bryan and  
9 Jim Funderburgh?  
10 A Yes.  
11 Q By the way, what's the relationship  
12 between Bryan and Jim Funderburgh?  
13 A Father/son.  
14 Q And so who were the other two  
15 employees, besides the three of you?  
16 A Ruth Talent and Vickie.  
17 Q Do you recall Vickie's last name?  
18 A Vickie -- no.  
19 Q And what did Ruth Talent and Vickie  
20 do?  
21 A Ruth was Jim's secretary and Vickie  
22 was in charge of paperwork.  
23 Q Did you have any obligations with  
24 regards to the payroll function?  
25 A Paying people? I did not pay people  
0012  
1 or cut checks or any of that.  
2 Q Did you play any part in setting up  
Page 5

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3 the payroll system?  
4 A No.  
5 Q Were you generally familiar with how  
6 the payroll system operated?  
7 A Yes.  
8 Q Is Jim's Maintenance still in business  
9 today?  
10 A No.  
11 Q Why is that?  
12 A I think our obligations were more than  
13 our -- how much was coming in.  
14 Q When did Jim's Maintenance cease  
15 operations?  
16 A Right after we were fired by Target.  
17 Q That would have been in May of 2006?  
18 A Yes.  
19 Q At that point in time, May 2006, was  
20 Jim's Maintenance providing cleaning services for any  
21 entities other than Target?  
22 A A local school.  
23 Q Okay. And, approximately, how many  
24 Target stores, if you know, was Jim's Maintenance  
25 cleaning prior to May of 2006?  
0013  
1 A Around 80.  
2 Q So, other than the 80 Target entities  
3 and this one local school, were you providing -- was  
4 Jim's Maintenance providing cleaning services for any  
5 other entities?  
6 A No.  
7 Q Do you have any plans at present to  
8 move or change your location?  
9 A No.  
10 Q Now, did you start working for Jim's  
11 Maintenance before Jim's started working for Target?  
12 A Yes.  
13 Q And I believe you said that you  
14 started in, approximately, 1999?  
15 A Yes.  
16 Q And what sorts of service was Jim's  
17 providing at that time?  
18 A They were providing cleaning services  
19 for Service Merchandise.  
20 Q And when you say "Service  
21 Merchandise," are you talking about things like big  
22 box stores, that sort of thing?  
23 A There was a store called Service  
24 Merchandise --  
25 Q Oh, I --  
0014  
1 A -- that is now out of business.  
2 Q Oh, okay. So it was a specific  
3 entity?  
4 A Yes.  
5 Q And how long did you keep that  
6 contract with Service Merchandise?  
7 A Until they closed their doors. I  
8 don't remember. Approximately 2001, I'm guessing,  
9 when they shut down.  
10 Q Okay. And did you have any  
11 relationship or know Jim or Bryan Funderburgh before  
12 you came to work for Jim's Maintenance?  
13 A Yes.  
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14 Q What -- briefly, describe for me --  
15 what's your educational history?  
16 A High school, college.  
17 Q And when did you graduate high school?  
18 A '87.  
19 Q And was that -- where was that high  
20 school?  
21 A Choctaw High School.  
22 Q And you went to college after that?  
23 A Yes, I did.  
24 Q Where did you go to college?  
25 A University of Oklahoma.  
0015  
1 Q Did you graduate from Oklahoma?  
2 A Yes.  
3 Q What year?  
4 A '92.  
5 Q And what degree did you have?  
6 A Business.  
7 Q And where did you have employment  
8 prior to coming to Jim's Maintenance?  
9 A Many places.  
10 Q Okay. Why did you decide to come to  
11 work for Jim's Maintenance in 1999?  
12 A I was offered a position as an account  
13 representative; that they had a feeling that Service  
14 Merchandise was not doing very well and they needed  
15 to go out and get some more accounts.  
16 Q Okay. Now, do you recall the first  
17 time that Jim's Maintenance began doing work for  
18 Target?  
19 A Yes.  
20 Q Approximately, when did that occur?  
21 A 2000.  
22 Q Does the summer of 2000 sound about  
23 right?  
24 A Probably, yes.  
25 Q And what were the circumstances under  
0016  
1 which Jim's first went to work for Target?  
2 A (No verbal response)  
3 Q I guess what I'm asking is: How did  
4 you get your first contract with Target?  
5 A We contacted the regional building  
6 operations person in San Antonio, which was Harlin  
7 Murray, and got the information from him on a store  
8 that was opening -- soon to open, was under  
9 construction, and we bid on it.  
10 (Short Break)  
11 (Reporter read back previous  
12 question and answer)  
13 Q (By Mr. Deats) And was that store  
14 located in a small town called Selma?  
15 A Yes.  
16 Q And, if you know, how did Jim know to  
17 call Harlin Murray with regards to the opening of  
18 that store, if you know?  
19 A I called him.  
20 Q Okay. You called Mr. Murray?  
21 A Yes.  
22 Q Okay. And how did you know to call  
23 Mr. Murray?  
24 A I called a Target store and asked for  
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25 -- asked who to talk to.  
0017  
1 Q Okay. And had you been doing any  
2 business, other than local business, prior to that  
3 time in the local Oklahoma area?  
4 A Yes.  
5 Q Where else had you been working for  
6 Service Merchandise?  
7 A All over the country.  
8 Q Okay. So when you called -- were you  
9 still working for Service Merchandise at the time you  
10 started working for Target?  
11 A Yes.  
12 Q And how many Service Merchandise  
13 stores were you cleaning at that time, approximately?  
14 A I don't know.  
15 Q Were you -- was your cleaning contract  
16 for any specific region or was it just, generally,  
17 all over the place?  
18 A I believe it was regionalized.  
19 Q And -- and what region were you  
20 working for Service Merchandise in, if you recall?  
21 A I don't remember.  
22 Q Okay. So you contacted Harlin Murray  
23 an expressed an interest in the Selma store?  
24 A Yes.  
25 Q And did you know, at the time you  
0018  
1 contacted Mr. Murray, that the Selma store was being  
2 built?  
3 A Yes.  
4 Q And, as a result of your discussions  
5 with Mr. Murray, were you able to reach an agreement  
6 on a contract?  
7 A Yes.  
8 (Plaintiff's Exhibit No. 1 was  
9 marked for identification)  
10 Q (By Mr. Deats) I'm handing you a  
11 document that's been labeled for identification  
12 purposes as Plaintiff's Exhibit No. 1. I'll ask you  
13 to look at that document for a moment.  
14 Q Do you recognize that as a copy of the  
15 original contract between Jim's Maintenance and  
16 Target?  
17 A I believe so.  
18 Q And, if you look on the first page,  
19 what's the date of that contract?  
20 A Date agreement was printed was June  
21 6th, 2000.  
22 Q And it was signed by representatives  
23 of Target and Jim's Maintenance in June of 2000?  
24 A Yes.  
25 Q And this was a contract at that time  
0019  
1 for a single store located in Selma, was it not?  
2 A Yes.  
3 Q And if we look at page 2 of the  
4 contract, was there a price established for providing  
5 cleaning services for the store in Selma?  
6 A Yes.  
7 Q And what was that price?  
8 A Under base fee -- "basic services," it  
9 says \$9,338.33 a month.  
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Q Okay. And there's also a column, I see, on Page 2 of Exhibit 1, for -- that's entitled "Maximum Chemical Budget."

A Do you see that?

Q Yes.

Q And what does that represent?

A It was for \$7,500 a year. That was how much -- the chemical budget that Target had allocated for that store.

Q Okay. Now, how was the price that you were going to clean the store at -- how was that determined?

A This price, we bid. We turned a bid in. (Indicating)

Q Okay. And when you say "this price," you're talking about the \$9,338.33?

A Yes.

Q If you recall, were you bidding against other cleaning services for the store?

A Yes.

Q And what about the chemical budget?

A Did -- how was that arrived at?

A That's assigned by Target.

Q Okay. And the store indicates that it's Store T-1204?

A Yes.

Q And located in Selma?

A Yes.

Q Now, if you recall, what were the arrangements for doing things, like supplying employees to clean the store, that were made between you and Target?

A I don't understand your --

Q You had a -- you had an established operation for -- for providing employees, did you not?

A Yes.

Q Okay. And I noticed on -- beginning on Page 3 of Deposition Exhibit 1, there is an item called "Terms And Conditions."

A Does that set forth the terms and conditions of the contract as you understood them?

A Where are we at?

Q I'm looking on Page 3.

MR. PIZZO: Terms and conditions.

THE WITNESS: Okay. What was the question again?

Q (By Mr. Deats) Did -- did this set forth the terms and conditions of the contract?

A Yes.

Q And if you go a little bit further down, you will see a document, Exhibit A, "Floor Maintenance Specifications."

A Yes.

Q Now, with regards to each of these documents -- first, with regards to the terms and conditions, were you able to negotiate the language of this contract?

A There was -- no. No. That was assigned.

Q To your knowledge, who wrote the terms

Page 9

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of this part of the contract labeled "Terms And Conditions?"

A Target.

Q And, then, if we look at Exhibit A, "Floor Maintenance Specifications," was there any negotiation with regards to these floor maintenance specifications?

A No.

Q Who wrote the floor maintenance specifications, to your knowledge?

A Target.

Q And, then, if we turn three more pages, you will see a document entitled "Cleaning Specifications Daily Requirements."

A Was this part of the original contract?

A I suspect.

Q Okay. And did you play any role in negotiating these daily requirements?

A No.

Q Who established those?

A That's Target.

Q Okay. Then, turning one more page in the exhibit, there is a document entitled "Frequency As Necessary To Meet Contract Spec -- Expectations."

Q Did you have any part in negotiating these expectations?

A No.

Q Then, there is an Exhibit B and an addendum to Exhibit B, and Exhibit B is entitled

0023 "Security Regulations."

Q Did you have anything -- any role in negotiating Exhibit B?

A No.

Q Who, if you recall, drafted Exhibit B?

A Target.

MR. PIZZO: Can I interject something and ask the question. There's numbers. Are these Bates stamp numbers you have down at the bottom, Craig?

MR. DEATS: Yeah. For clarification, these are documents that were received from Target and represented to us to be documents that had been obtained, in turn, from Jim's Maintenance.

MS. MILLER: Yeah. These were documents that we received pursuant to a subpoena we issued in the case.

MR. PIZZO: Okay.

MS. MILLER: So, for clarification purposes, we Bates stamped them by number, with a "J" on the end of it, to indicate that we received them from Jim's Maintenance.

MR. PIZZO: Okay. Thank you. I didn't mean to interrupt,

0024 Craig.

MR. DEATS: No. No problem.

Q (By Mr. Deats) Then, finally, the very last page of the exhibit is an Exhibit D, "Certification Statement."

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Q Do you recall whether or not this was part of the original contract?

A I don't know.

Q Okay. And it's signed by Bryan Funderburgh, as president. So maybe these questions would be more appropriately addressed to Mr. Funderburgh?

A Yes.

Q I guess I'm going to call him Bryan, for ease of reference, since we have got two Mr. Funderburghs in the room, but --

Q Okay. Now, how long, after June of 2000, did you continue cleaning just one store for Target?

A Probably less than a year.

Q Okay. And what happened at that point?

A Well, we started bidding -- bidding on all the new stores that were coming open in the area.

Q And when you say "in the area," you're talking about in the San Antonio area?

A Yes.

Q And were you successful in bidding on the stores?

A Yes.

Q If you know, who were some of your competitors in bidding for these stores?

A I don't remember. They were local.

Q And what was the second store you were successful in bidding on, if you recall?

A I'll guess. It was either 1354 or 1785.

Q And 1354 was a store located in San Antonio, on Blanco Road?

A Yes.

Q And when you were awarded that store, did you execute another contract similar to Plaintiff's Exhibit 1?

A I suspect, yes. I didn't do that.

Q Okay. It's possible that Bryan Funderburgh did?

A Yes.

Q To your knowledge, was there any difference in the terms under which you would have cleaned the second store than the terms for cleaning this first store?

A No.

Q And, as with the first store, did you actually set a bid price for the monthly price that you would charge to clean the stores?

A Yes. We turned in a bid and were awarded the contract.

Q After you got that second store in San Antonio, were you successful in bidding on any other stores?

A Yes.

Q Okay. And what were the next -- what was the next store or stores that you obtained?

A I -- I vague -- I think it was 1785.

Q And where is 1785 located, if you recall?

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A Right in San Antonio somewhere, close to 1354.

Q And did you execute -- do you know whether or not you executed a contract for that store?

A No. I know that they would send us out a new contract -- when we were awarded a contract for a store that was going to open, they would reprint all of this, with the new -- you know, it would be -- it would look similar to this and it would just have the next store below it, send it out, sign it, and send it back. (Indicating)

Q And I'm referring to -- that's what happened when we got new stores.

Q Okay. Now -- it looks like store 1785 is located on Bandero Road in San Antonio. Does that accord with your recollection?

A That sounds correct, yeah.

Q Okay. At some point, do you recall whether or not you were awarded additional stores in the Oklahoma City area?

A Yes.

Q And when did that occur, if you recall?

A Within the next year, they came to us and said that their contractor was not performing in Oklahoma.

Q So, rather than you approaching them and bidding on a new store, in the case of these Oklahoma stores, then, Target approached you?

A Yes.

Q Did Target ask you to submit a bid to clean the Oklahoma stores?

A No.

Q How -- did you sign a contract to clean stores in Oklahoma?

A Yes.

Q And did that store -- did that contract cover all stores in Oklahoma, some stores?

Q What do you recall?

A All stores in Oklahoma.

Q And, approximately, how many stores was that?

A Seven, I believe.

Q Now, at this point in time, were you still cleaning Service Merchandise stores?

A I'm not sure. That's about the same time when we stopped -- when they stopped.

Q Okay. And the reason you stopped cleaning Service Merchandise stores was because Service Merchandise went out of business?

A Yes.

Q How was the price per store determined when you started cleaning the Oklahoma stores?

A That was given to us. They told us, if we could do it at the same price that the previous contractor was in there and provide new equipment for their stores, then we could have it.

0029 Q And -- so they didn't want you to use

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any of the equipment that had been used by the prior contractor?

No. They were very disappointed in the prior -- they had not been putting new equipment -- and when they get a new contractor, they expect new equipment coming in. That's part of -- that goes along with the change.

Q Okay. So the deal was, if you would clean the stores at the same price as the old contractor, Jim's Maintenance could have them?

A With new equipment.

Q And did you sign a contract to clean those Oklahoma stores?

A I did not.

Q Okay. But do you know whether --

A I'm sure they did, yes.

Q And do you recall whether or not it was similar to this contract which is Plaintiff's Exhibit No. 1?

A I suspect.

Q Now, do you recall what the name of the former cleaning company was?

A No, No, I don't.

Q And with regards to these stores, the chemical budget, was that something that was, more or less, the same from store to store --

A No.

Q -- or did it vary?

A It was assigned. It's a percentage of their store size.

Q Okay. And if you know, how did Target arrive at the price -- other than it was the price the former contractor did it, was there any formula or anything that went into the price they set for cleaning these stores in Oklahoma?

A For -- no. We were just given those prices.

Q And you don't know how they arrived at them with the other contractor?

A No.

Q Now, were you able -- you said that you had to provide new equipment. Could you bring in used equipment, that you had used in other locations, or did you have to buy new equipment?

A They asked for new equipment.

Q Was that considered part of the deal that you made with them, that you would provide brand-new equipment?

A Yes.

Q Did you have to make any special arrangements to be able to provide new equipment for these seven stores?

A We had to lease new equipment.

Q Okay. Did you -- so you leased equipment at that point, rather than trying to buy equipment?

A I believe so.

Q Okay. Now, at some point in time in 2001, did you enter into a contract with Target to clean additional stores?

A That might be the time frame. I'm not

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like in Oklahoma, they would -- they would come to you and offer it to you, I suspect -- is what happened with us.

Q In this, they reduced -- they had approximately 200 housekeeping companies that they were paying, across the board, all different kinds of prices for different reasons, whatever the regional person negotiated with that store.

Q And, at this time, they decided to stop doing that -- and they -- in Minneapolis, Mike Bell, the Building Services -- they started negotiating these contracts out of Minneapolis, instead of the regional people in the field.

Q Okay. Now, you mentioned a guy, Mike Bell. He was a Target employee?

A Yes.

Q And he was located in Minneapolis, Minnesota?

A Yes.

Q And what was his title, if you know?

A This stamp here says "Vice-president, Building Services."

Q And, at that point in time, do you know whether or not Target reduced the number of cleaning contractors it was using nationwide?

A Yes.

Q Approximately, how many cleaning contractors did Target start using after this point in time?

A 25.

Q And were you assigned stores individually, by region, on some other basis? How?

A By region.

Q Okay.

A By city.

Q And what region or regions were covered by this contract?

A I recognize Oklahoma; Austin; Kansas City; Kansas; San Antonio; Waco; West Texas.

Q And we could determine the number of stores simply by counting the stores that are listed there on the first page of the contract; right?

A Yes.

Q And, at the point in time that you agreed to this contract, did Jim's Maintenance actually want all of the stores that were assigned to it?

A No. There are a few stores that are remote stores, that you lose a lot of money, that -- we were assigned the prices for each one of these stores.

Q Okay.

A And some of these stores are -- are what we call "losers." They're out in remote areas and very difficult to supervise, provide transportation, find employment for people.

Q It's -- it's more cost effective in the urban areas.

Q And were the stores that were less cost effective located primarily in west Texas?

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familiar with the -- the exact date

MR. BEARDALL: I don't have a

copy of -- or I can -- I can get a copy of this.

Do you all have copies of these contracts that you want to use your copy of? This is the one that's signed on October 15th.

I can pull out another one and make it for you, if you want it.

MR. PIZZO: October 15th of what year?

MR. DEATS: 2001.

MR. PIZZO: All right.

MR. BEARDALL: Do you want to

work off of yours, or I can get another copy of it?

MS. MILLER: I do, and I have an additional copy.

MR. BEARDALL: Do you? That would be great.

MS. MILLER: Let me -- let me double-check it, to make sure it's the same.

MR. BEARDALL: Okay. Because 0001 are the ones that were numbered --

MS. MILLER: Yeah. The copy I have is not based on that.

MR. BEARDALL: And then it goes through the 0035.

What are you looking for?

MS. MILLER: My copy is not Bates stamped, so --

MR. BEARDALL: I understand. I was going to tell you the last thing in it is this --

MR. PIZZO: Do you want to do this off the record or on the record?

MR. DEATS: Yeah. Let's go off the record.

(Short Break)

(Plaintiff's Exhibit No. 2 was marked for identification)

Q (By Mr. Deats) I'm handing you a document that's been labeled for identification purposes as Plaintiff's Exhibit 2.

Do you recognize that as a copy of a contract entered into between Target and Jim's Maintenance in October of 2001?

A Yes.

Q And was this contract different in some ways from prior contracts you had entered into to clean other stores?

A It has additional stores.

Q Okay. And how did you come to have these additional stores, if you recall?

A We were offered these areas.

Q Now, if you know, at this point in time, in August -- or October of 2001, was Target changing the way it was approaching providing cleaning services to its stores?

A Yes.

Q And what was your understanding of the nature of that change?

A In the past, we had bid on stores -- or regions, or if somebody was getting kicked out,

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A And rural Kansas.

Q By the way, you mentioned -- among the areas that you cleaned, you said Kansas City. Are you talking about Kansas City, Kansas, or Kansas City, Missouri, or both?

A Both.

Q Did -- was there any negotiation? Did you, for example, say to Target, "Well, we want some of these other stores, but we don't want West Texas," for example?

A Yes.

Q And what do you recall Target's reaction being?

A "No. You -- you must take them all together."

Q That was part of their price reduction. They -- on -- on lowering the prices of the contracts, they could -- they could -- there was a -- it was less expensive for us to supervise urban areas, cities, and they knew that. So, instead of having three contractors in Kansas City, they could negotiate the price down lower and give one person the contracts for Kansas City.

Q These Kansas City stores were offered to another company before us, that couldn't do it at that price and turned it down, and then they called us and asked us if we would take Kansas City.

Q We were not former -- formerly in the Kansas City market before this.

Q Okay. Now, you already were in the San Antonio market, were you not?

A Yes.

Q Did Target, in negotiating this contract, Plaintiff's Exhibit 2, with you, say that you had to take certain stores in order to get some of the more favorable stores in the urban areas?

A You had to take all the stores.

Q Okay. Including stores like in west Texas?

A Yes. You -- they couldn't give west Texas away by itself. You have to give something good with it. Like Kansas, rural Kansas goes along with the Kansas City.

Q Okay. And when we're talking about west Texas, like stores in Midland, Odessa, those sort of places?

A Lubbock, Wichita Falls.

Q And you already mentioned this, but did -- were you able to negotiate at all on the price per store?

A No. It was take it or leave it.

Q And were you able to negotiate at all on the chemical budget for each store?

A No.

Q Were you able -- if we look down into the contract after several pages of listings of stores -- and, by the way, each store has the price listed by it, does it not?

A Yes.

Q Okay. But I don't see a chemical budget listed for each store. Do you know where, in

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the contract, the chemical budgets might be found?  
 A It was a separate document.  
 Q Do you recall what the name of that  
 document was?  
 A No.  
 Q And, then, if you get past that, you  
 see another sheet marked "Terms And Conditions";  
 correct?  
 A Yes.  
 Q Were you able to negotiate with  
 regards to the language of this "Terms And  
 Conditions" document?  
 A No.  
 Q If you know, who drafted the "Terms  
 And Conditions" document?  
 A Target.  
 Q And, then, after "Terms And  
 Conditions," you will see a document "Contractor's  
 Procedural Rules." It begins on a Bates stamp  
 Target/Itzep Confidential 14.  
 Q Do you see that?  
 A Yes.  
 Q Was this document part of the original  
 contract?  
 A I suspect.  
 Q Did you have any -- was Jim's  
 Maintenance able to negotiate the terms of the  
 contractor's procedural rules?  
 A No.  
 Q And, then, if you look on Page 2 of  
 the procedural rules, it talks about equipment and  
 supplies.  
 Q And I assume you were not able to  
 negotiate with regards to that, either?  
 A No.  
 Q Then, if we go down a little bit  
 further, there are some instructions for housekeeping  
 contractor security regulations and, then,  
 housekeeping security regulations.  
 Q Were these part of the original  
 contract?  
 MR. PIZZO: Wait a minute. Oh,  
 okay. I'm sorry.  
 THE WITNESS: I suspect.  
 Q (By Mr. Deats) Did you have -- were  
 you able to negotiate at all with regard to the  
 language of these documents?  
 A No.  
 Q Then, if you go down a little bit  
 further, you will see, on Page 23, a set of  
 housekeeping expectations.  
 MR. PIZZO: Can you point me to  
 what page it is on the contract, since I don't have  
 the Bates stamped --  
 MR. DEATS: Sure. It's Page 10.  
 MR. PIZZO: Okay. Thank you.  
 Q (By Mr. Deats) Did -- was this part  
 of the original contract?  
 A I suspect.  
 Q And were you able to negotiate at all  
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with regards to this?  
 A No.  
 Q Now, it also has some housekeeping  
 expectations for Marshall Fields, but were you  
 cleaning any Marshall Fields stores?  
 And I'm looking at Page 21 of the  
 contract -- excuse me. 21 is Mervyn's.  
 MS. MILLER: Page 16.  
 THE WITNESS: I believe --  
 Q (By Mr. Deats) Page 16.  
 A I believe we took the Mervyn's over at  
 the same time --  
 Okay.  
 A -- with the Targets -- with -- with  
 those Targets. On or about that same time.  
 Q But what about Marshall Fields? Were  
 you doing any --  
 A No. Sorry.  
 Q -- Marshall Fields stores?  
 A No, we were not doing any Marshall  
 Fields.  
 Q And, then, looking at Page 21, there's  
 some housekeeping expectations for Mervyn's.  
 Now, did you have any -- did Jim's  
 have any role in negotiating those expectations?  
 A No.  
 Q Now, looking back at Page 1, it lists  
 the stores that you were cleaning when you first  
 signed this contract; correct?  
 A Yes.  
 Q And Mervyn's stores begin with an "M,"  
 followed by a number, do they not?  
 A Yes.  
 Q So does it appear to you, from looking  
 at the contract, whether or not you were cleaning any  
 Mervyn stores at this point in time?  
 A This contract does not show that.  
 Q And this contract, if you look on Page  
 1, shows a print date, does it not, in the lower,  
 left-hand corner?  
 A Yes.  
 Q And what's that printed date? It's  
 rather small.  
 A Printed 10/9/2001.  
 Q And, then, Bryan Funderburgh, again,  
 signed for Jim's, as its president?  
 A Yes.  
 Q And what's the date that he signed the  
 contract?  
 A 10/15/2001.  
 Q And, then, the contract is signed for  
 Target by Michael A. Bell; correct?  
 A Yes.  
 Q And there's no date by his signature?  
 A Yes. Correct.  
 Q And you have already indicated who Mr.  
 Bell is; correct?  
 A Yes.  
 Q And, again, looking at the contract as  
 an entirety, did Jim's have any role in negotiating  
 the language of this contract?  
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A No.  
 Q Including the prices?  
 A (No verbal response)  
 Q No --  
 A Correct.  
 Q Okay. Including the chemical budgets?  
 A Correct.  
 Q Now, there was also something called a  
 contractor's handbook, was there not?  
 MR. PIZZO: Counsel, can you  
 point the page out again?  
 MR. DEATS: I -- I'm -- I'm not  
 looking at a page --  
 MR. PIZZO: Oh, okay. I'm sorry.  
 MR. DEATS: -- right now of the  
 exhibit.  
 Q (By Mr. Deats) There was something  
 called a contractor's handbook, was there not?  
 A I believe.  
 Q Was it -- was it a brochure?  
 Q I'm going to show you --  
 A Oh, yes. Yes.  
 Q And we'll introduce that as an exhibit  
 later on, but --  
 A Yes.  
 MR. PIZZO: Not my copy.  
 Q (By Mr. Deats) If you recall, was the  
 contractor's handbook made part of the contract, as  
 well, if you recall?  
 A I -- that was given to us by Target at  
 the same time.  
 Q And did you have any role in  
 negotiating the language of the contractor's  
 handbook?  
 A No.  
 Q What was the purpose, as you  
 understood it, of the contractor's handbook?  
 A That was to tell us what our -- to  
 tell us what our duties were.  
 MR. PIZZO: I've got a lot of  
 marking in here, privately, so work product. I think  
 I would rather have you -- and I think they copied it  
 almost identical, if not identical.  
 MR. DEATS: Okay. I'll tell you  
 what. Let's mark it, right now, as Plaintiff's  
 Exhibit 3.  
 (Plaintiff's Exhibit No. 3 was  
 marked for identification)  
 MR. DEATS: Shannon, if you want  
 to look it over. It's just a copy of what we have  
 already provided to you. If you want, I'll let you  
 go over it, at a break, page by page, to make sure  
 you have got a copy of everything.  
 (Short discussion held off the  
 record)  
 Q (By Mr. Deats) Looking back at  
 Plaintiff's Exhibit No. 2 --  
 MR. DEATS: And I'm looking at  
 the page Bates stamped 9, and it's Page 1 of the  
 "Terms And Conditions."  
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MR. PIZZO: Oh, okay.  
 Q (By Mr. Deats) And I'm looking at  
 Paragraph No. 1, and do you see the second paragraph  
 under No. 1?  
 A Yes.  
 Q That paragraph does purport to  
 incorporate, by reference, the contractor handbook  
 into this agreement, does it not?  
 A Yes.  
 Q And I'm handing you a document that's  
 been labeled for identification purposes as  
 Plaintiff's Exhibit 3.  
 Do you recognize that document?  
 A Yes.  
 Q What is that document?  
 A This is the contractor handbook.  
 Q And was Jim's Maintenance provided a  
 copy of that handbook?  
 A Yes.  
 Q And who provided Jim's Maintenance --  
 Target.  
 Q Did you get that contractor's handbook  
 at the time Plaintiff's Exhibit 2 was signed, before,  
 or do you recall?  
 A I was given this at this contractor  
 meeting -- on the front of that housekeeping  
 contractor meeting, June 11th through 13th, that's  
 when we were provided these.  
 Q Okay. I see. You were given this  
 contractor handbook at a contractor meeting June 11th  
 through 13th, 2002?  
 A Yes.  
 Q Is that the first time you recall  
 seeing this handbook?  
 A Yes.  
 Q But if we look back at Depo -- excuse  
 me, Plaintiff's Exhibit 2, and we've already looked,  
 it was actually incorporated, by reference, into the  
 contract that you signed with Target, was it not?  
 A Yes.  
 Q And when I say "you," of course, I  
 mean Jim's Maintenance.  
 A I mean, I -- I'm reading that. Yes,  
 it says -- it refers to the contractor's handbook in  
 this contract.  
 Q Now, did Jim's Maintenance have any  
 role in negotiating the contents of this handbook?  
 A No.  
 Q And you have already indicated the  
 purpose of the handbook, but, again, briefly, what  
 was the purpose of your handbook, your understanding?  
 A This was our guideline, our training.  
 Q Your training specifically for  
 providing cleaning services to Target?  
 A Yes.  
 Q And did you utilize this same handbook  
 later on, when you provided services for Mervyn's?  
 I suspect. I believe so.  
 Q Now, you indicated that the contract  
 price per store was not negotiated; correct?  
 A Yes.  
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Q What, if anything, do you know about how Target arrived at assigning a price that a store would be cleaned at?

A We were told that they went online to some kind of government web site on how much janitors should be paid per hour, and then it was assigned per -- per region or by state.

Q So Texas was the least paid, and then it went all the way up. Like the further north you went -- New York was really high. Their contracts were ridiculous on how much they were paying people in New York.

Q Okay. And do you recall Target telling you anything else about how they assigned a price per store?

A Also, with the amount of snow by region. You know, the further you got north, the more snow you had, the more snow removal, possibly -- not removal, but the more salt that's tracked in.

Q So they would -- they would allocate more -- you got a percentage more.

A Oklahoma was paid a percentage -- a small percentage more than Texas, and then it went up. Kansas was a little bit more.

Q As a result of these new prices per store, if you recall, did the amount you were getting per store go up, go down, did it stay the same?

A When we were assigned these stores?

Q Yes, sir.

A The prices went down.

Q By approximately, how much on average, if you recall?

A I don't remember.

Q Did it vary from store to store, though? Did some stores actually go up, some go down? How did that work?

A Yes. I believe that to be the case.

Q But, on average, the actual amount that you were being paid lessened?

A Yes.

Q Were there any stores where you saw drastic cuts?

A I don't know if it was this, but following this contract, there was another contract where we had a price reduction --

Q Okay.

A -- from -- so --

Q I'm thinking specifically with regards to -- I think you said that the store you originally bid on was Selma, right?

A Yes.

Q Now, what happened to the price that you were cleaning the Selma store under this contract, if you recall?

A It was a drastic -- there was a drastic change.

Q Selma is --

A 1204.

Q -- 1204?

A So, if we looked -- now, you said the

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A From Tenant. Tenant Corporation provides the scrubbers and the vacuums and the -- the carpet cleaners.

Q Okay.

A That's who we leased from.

Q And when you lease from them, you have to lease new equipment?

A Yes.

Q And did you make the decision to lease from Tenant?

A I did not.

Q Do you know who did make the decision?

A I suspect Jim Funderburgh.

Q Okay. Did Target, in any way, determine who you were to lease equipment from?

A The -- they recommended the Tenant scrubber.

Q Now, over the course of the next couple of years, did you continue cleaning Target stores under this contract?

A And I'm looking at --

Q There was a -- there was --

Q -- Plaintiff's Exhibit 2.

A We continued until it changed, until -- either there was a new store -- if there was a new store opened and we were awarded it, then we would just get an updated contract.

Q And when you say "an updated contract," you got additional data service sheets that indicated you were being assigned additional stores?

A Yes. We would get this all over again, the same front pages.

Q Now, I wanted to turn your attention to Page 1 of the "Terms And Conditions" document.

MR. PIZZO: That's Bates stamped what?

MR. DEATS: It's Bates stamped Target/Itzep 9.

Q (By Mr. Deats) And I'm looking specifically with regards to Paragraph 2, "Termination."

Now, the agreement --

A Yes.

Q -- itself, is -- if we look back on the first page of the document, it covers a term from August of 2001 to August of 2004; correct?

A Yes.

MR. PIZZO: Where do you see that? I'm sorry.

MR. DEATS: On Page 1.

MR. PIZZO: Oh, I see. It's on Par -- Paragraph 4.

MR. DEATS: Uh-huh.

MR. PIZZO: Okay. Okay. I got you.

Q (By Mr. Deats) Now, going back to Page 1 of "Terms And Conditions," did Jim's Maintenance have the right to terminate this contract prior to the time -- prior to the end of the term?

A I don't know. I --

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original price was somewhere in the \$9,300 range?

A Yes.

Q What was the new price for the Selma store under this contract?

A \$7,618.

Q Do you recall whether or not the chemical budget stayed the same?

A I do not remember.

Q Now, was there any change, at this point in time, in the manner in which you provided services to individual stores?

A No.

Q You kept doing business the same way you had been doing it before?

A Yes.

Q Just had a larger number of stores; correct?

A Yes.

Q Now, at this point in time, in late 2001, were you still cleaning stores for Service Merchandise?

A I believe so.

Q Okay.

A I don't remember.

Q Did you phase out Service Merchandise shortly after this?

A I do not remember. I didn't handle Service Merchandise, and these stores -- they were not phased out. When they closed, that was it. We -- we -- Jim's Maintenance cleaned them until the day they closed.

Q At this point in time, in 2001, other than Service Merchandise and that school that you talked about, were you doing cleaning services for anybody, other than Target?

A We were attempting to work with Marr's Music and we were cleaning some of their stores. Probably had 10 stores.

Q And were those Marr's Music stores located here, in Oklahoma?

A One.

Q Okay.

A It was Oklahoma City.

Q And others were located where?

A Florida, New York, Texas.

Q And, at some point, did you phase out cleaning for the Marr's Music stores?

A Yes.

Q Why was that?

A I think they went bankrupt, too.

Q Now, did you have to purchase any new equipment when you got this contract in 2000?

A Yes.

Q Was it a sizable amount of equipment, a little equipment, or what?

A A sizable amount.

Q How did you go about doing that?

A Lease.

Q Okay. You continued to lease equipment?

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Q Okay.

A Probably.

Q Okay. But did -- did -- well, the document speaks for itself, doesn't it?

A Sure. Yes.

Q Do you know whether or not Target had the right to terminate this agreement during the term?

A I suspect that it's written in the document.

Q Okay. Now, in the years following the execution of this contract in October 2001, did you receive additional stores to clean from Target?

A What was the question again?

Q Did you receive additional stores to clean from Target?

A After this?

Q Yes, sir.

A Yes.

Q Okay. And you have already indicated that you would get updates to your data service agreement indicating those stores?

A Yes.

Q And did you ever lose stores?

A In other words, did they take stores away from you?

A No. Not for a long period of time.

Q Why would you get new stores during the term of this agreement? Do you recall?

A Any store opening in your region, that you cleaned, was automatically given to you.

Q Now, you were aware that Target could terminate the contract to clean a particular store for cause; correct?

A Yes.

Q And, in the two or three years following the execution of this agreement, do you recall any time in which you lost a store?

A No.

Q At some point in time, you began cleaning Mervyn stores, as well?

A Yes.

Q And do you recall how it came to be that you started cleaning Mervyn stores, as well?

A We were given the Mervyn stores in our area, all the ones -- when we were assigned these Target stores for this region, we were given the Mervyn's, also.

Q By the way, you indicated that, when you executed this contract, this Plaintiff's Exhibit 2, that Target reduced to somewhere in the neighborhood of 25 contractors nationwide; is that correct?

A From, approximately, 200 down to 25 contractors.

Q Okay. And do you recall the names of any of the other contractors that Target continued to use at that time?

A Global Services was one. Custom Clean of Texas was one.

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4 I can't remember the names.  
 5 Q Okay.  
 6 A I met all of them at this meeting.  
 7 Q Now, going back to the Mervyn stores,  
 8 did the way you -- did you clean the Mervyn stores in  
 9 the same manner in which you cleaned the Target  
 10 stores? A No. It was morning cleaning.  
 11 Q Okay. And Target --  
 12 MR. PIZZO: I'm sorry. It was  
 13 what? THE WITNESS: Morning cleaning.  
 14 MR. PIZZO: Oh, okay. I'm sorry.  
 15 THE WITNESS: We would come in in  
 16 the morning.  
 17 Q (By Mr. Deats) Okay. And at Target,  
 18 when would you do your cleaning?  
 19 Q That was all night.  
 20 Q And cleaning the Mervyn stores during  
 21 the morning, was that an entire day, was it a half  
 22 day, or what? A It was part-time. A person might be  
 23 in there three hours.  
 24 Q Okay. Now, at Target stores, how many  
 25 days a week did you provide cleaning services?  
 26 A Seven days a week.  
 27 Q And at Mervyn stores, how many days a  
 28 week did you provide cleaning services?  
 29 A I think six.  
 30 Q As time passed, after the execution of  
 31 this contract, which is Plaintiff's Exhibit 2, did  
 32 Target ever change the price per store that you were  
 33 cleaning at? A Yes. There was a price reduction  
 34 after this contract, I believe.  
 35 Q And, approximately, when did that  
 36 price reduction occur? A I don't know.  
 37 Q Would it have been a year later, two  
 38 years? A Within a year, I would say. I thought  
 39 it was within a year.  
 40 Q And how did that price reduction come  
 41 about? A Oh, we were notified that -- that they  
 42 were looking at all areas to save money and that --  
 43 how did they do that? I've forgot how they notified us.  
 44 Q But -- and when you say "they," do you  
 45 recall who might have notified you? A I believe that was -- Chris Carlson  
 46 was in charge at that time.  
 47 Q And who is Chris Carlson? A A Target employee with Building  
 48 Services.  
 49 Q Did he work for Michael Bell --  
 50 A Yes.  
 51 Q -- or did he replace Michael?  
 52 A No. He works underneath Michael Bell.  
 53 Q And was that primarily who you were  
 54 dealing with at Target by this time, Building  
 55 Services?  
 56 Q Yes.  
 57 Q Other than Mike Bell and Chris  
 58 Carlson, do you remember the name of other employees  
 59 in Building Services that you dealt with on a regular  
 60 basis? A I don't.  
 61 Q Now, you mentioned a gentleman, Harlin  
 62 Murray --  
 63 A Yes.  
 64 Q -- that you had contacted with regards  
 65 to the original store.  
 66 Harlin Murray? A Yes.  
 67 Q What type of contacts did you have  
 68 with Harlin Murray during this time?  
 69 Q What type of contacts? Weekly  
 70 contact.  
 71 Q And why would he call you or why would  
 72 you call him? Well, Target was going through some  
 73 changes and the Field Building Services, who we had  
 74 always reported to in the past, is who the store team  
 75 leader -- the store manager would look to for help on  
 76 cleaning their store.  
 77 But whenever this was all -- when this  
 78 -- these changes came about and we got the contractor  
 79 handbook and we started working through Minneapolis,  
 80 we were supposed to report to Chris Carlson and the  
 81 home office, but the stores continued to lean on  
 82 Building Services in their store, or their regional  
 83 guy, who had always provided their support.  
 84 So -- if that answers your question.  
 85 Q Sure. And that regional guy that the  
 86 store managers looked to was Harlin Murray?  
 87 A For Texas and Oklahoma.  
 88 Brian Kenny was in charge of the other  
 89 areas in Kansas, Kansas City, until there was a  
 90 change and then he picked up Oklahoma.  
 91 Q Okay. Now, other than they were  
 92 looking at savings reductions in all areas of their  
 93 operations, did Target provide you any other reason  
 94 for the price reduction?  
 95 A No.  
 96 Q Was there any negotiation of the price  
 97 reduction which occurred?  
 98 A No.  
 99 Q Did you receive any benefit in  
 100 exchange for the price reduction?  
 101 A In other words --  
 102 No.  
 103 Q -- did they say, "We'll give you more  
 104 stores," or anything like that?  
 105 A No. No. He mentioned that, "Maybe it  
 106 will go back in a couple of years, when" -- I think,  
 107 at that time, retail was down or stock -- Target was  
 108 down, or something, and that he indicated, you know,  
 109 "Maybe there will be a raise in there for you in the  
 110 future," or something.  
 111 Q Did the price reduction have any  
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15 Services?  
 16 A Yes.  
 17 Q Other than Mike Bell and Chris  
 18 Carlson, do you remember the name of other employees  
 19 in Building Services that you dealt with on a regular  
 20 basis? A I don't.  
 21 Q Now, you mentioned a gentleman, Harlin  
 22 Murray --  
 23 A Yes.  
 24 Q -- that you had contacted with regards  
 25 to the original store.  
 26 Harlin Murray? A Yes.  
 27 Q What type of contacts did you have  
 28 with Harlin Murray during this time?  
 29 Q What type of contacts? Weekly  
 30 contact.  
 31 Q And why would he call you or why would  
 32 you call him? Well, Target was going through some  
 33 changes and the Field Building Services, who we had  
 34 always reported to in the past, is who the store team  
 35 leader -- the store manager would look to for help on  
 36 cleaning their store.  
 37 But whenever this was all -- when this  
 38 -- these changes came about and we got the contractor  
 39 handbook and we started working through Minneapolis,  
 40 we were supposed to report to Chris Carlson and the  
 41 home office, but the stores continued to lean on  
 42 Building Services in their store, or their regional  
 43 guy, who had always provided their support.  
 44 So -- if that answers your question.  
 45 Q Sure. And that regional guy that the  
 46 store managers looked to was Harlin Murray?  
 47 A For Texas and Oklahoma.  
 48 Brian Kenny was in charge of the other  
 49 areas in Kansas, Kansas City, until there was a  
 50 change and then he picked up Oklahoma.  
 51 Q Okay. Now, other than they were  
 52 looking at savings reductions in all areas of their  
 53 operations, did Target provide you any other reason  
 54 for the price reduction?  
 55 A No.  
 56 Q Was there any negotiation of the price  
 57 reduction which occurred?  
 58 A No.  
 59 Q Did you receive any benefit in  
 60 exchange for the price reduction?  
 61 A In other words --  
 62 No.  
 63 Q -- did they say, "We'll give you more  
 64 stores," or anything like that?  
 65 A No. No. He mentioned that, "Maybe it  
 66 will go back in a couple of years, when" -- I think,  
 67 at that time, retail was down or stock -- Target was  
 68 down, or something, and that he indicated, you know,  
 69 "Maybe there will be a raise in there for you in the  
 70 future," or something.  
 71 Q Did the price reduction have any  
 72 Page 26

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0063 impact on your operations?  
 2 A Yes.  
 3 Q What kind of impact did it have?  
 4 A Price reductions down the line.  
 5 everywhere. We had -- I mean, everybody had to -- we  
 6 received a pay cut.  
 7 Q When you say "everybody," all the  
 8 people that you were using to provide cleaning  
 9 services had their pay cut?  
 10 A Yes.  
 11 Q And did you have your pay cut at the  
 12 same time? Do you recall?  
 13 A Yes, I did.  
 14 Q Again, when they informed you of the  
 15 price reduction, did they give you any opportunity to  
 16 negotiate on the amount of the reduction?  
 17 A No.  
 18 MR. PIZZO: Can we --  
 19 MR. DEATS: Let's go off the  
 20 record a second, please.  
 21 (Short Break)  
 22 (Plaintiff's Exhibit No. 4 was  
 23 marked for identification)  
 24 Q (By Mr. Deats) I'm going to hand you  
 25 a document that's been labeled for identification as  
 26 Plaintiff's Exhibit 4.  
 27 Do you recognize this as a copy of a  
 28 contract between Jim's Maintenance and Target that  
 29 was entered into in 2005?  
 30 A Yes.  
 31 Q And what were the circumstances under  
 32 which this contract was negotiated?  
 33 A I don't remember on this one. This  
 34 one -- this one might have been the one first we did  
 35 by computer, where we turned in our bids by computer,  
 36 I believe.  
 37 Q Okay. Well, let's go through it. If  
 38 I could ask you to turn to page -- well, it's  
 39 actually Page 13 of the contract. The pages are  
 40 numbered on the bottom.  
 41 Okay. And it shows that it was,  
 42 again, signed for Target by Michael Bell; correct?  
 43 A Yes.  
 44 Q And it was signed for Jim's  
 45 Maintenance by Bryan Funderburgh?  
 46 A Yes.  
 47 Q And both of the two men apparently  
 48 signed the contract in August of 2005?  
 49 A Yes.  
 50 Q Now, prior to August of 2005, do you  
 51 recall whether or not an audit had been performed of  
 52 Jim's Maintenance at Target's behest?  
 53 A I don't believe so.  
 54 Q Do you recall an audit that had been  
 55 conducted by a group -- Price-waterhouse?  
 56 A Yes.  
 57 Q Do you recall whether or not that  
 58 audit occurred in the spring of 2005?  
 59 A I do not remember the dates.  
 60 Q But you do remember that an audit was  
 61 Page 27

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11 conducted?  
 12 A Yes. Two people from Price-waterhouse  
 13 came into our office for a week or three days or  
 14 something.  
 15 Q Okay. And do you know why -- shortly  
 16 before this 2000 contract was entered into, you  
 17 received some sort of notice from Target canceling  
 18 your old contract, did you not?  
 19 MR. PIZZO: Did you mean 2005  
 20 contract?  
 21 MR. DEATS: Yes.  
 22 MR. PIZZO: Okay.  
 23 THE WITNESS: Now, what?  
 24 Q (By Mr. Deats) Did -- did your old  
 25 contract, which is Plaintiff's Exhibit 2 -- did it  
 26 get canceled shortly before or simultaneously with --  
 27 Yes. I think so. I think they send a  
 28 letter out -- it scares everybody, everybody calls,  
 29 "Hey, we got a termination letter," and they say,  
 30 "No. We just have a new contract coming out."  
 31 That sounds familiar.  
 32 Q Okay. Did -- were -- were you dealing  
 33 -- and by "you," I mean Jim's Maintenance.  
 34 He was Jim's Maintenance continuing to  
 35 deal with Michael Bell at this point?  
 36 A He signed the contracts.  
 37 Q Okay. But were you having phone  
 38 conversations about this termination and new contract  
 39 with Chris Carlson, or do you recall?  
 40 A No. At this time, it was a person  
 41 named Ted.  
 42 Q Do you recall what Ted's last name  
 43 was?  
 44 A Ted Fischer.  
 45 Q Okay. Had Ted Fischer replaced Chris  
 46 Carlson?  
 47 A Yes. I believe so.  
 48 Q Okay. So he held the same position  
 49 that Chris Carlson had held previously?  
 50 A Yes. I believe so.  
 51 Q And in discussing this new contract,  
 52 which is Plaintiff's Exhibit 4, with Target, Jim's  
 53 Maintenance was dealing primarily, then, with Ted  
 54 Fischer?  
 55 A Yes, kind of. They had -- I'm sorry.  
 56 They -- they were making further changes. We weren't  
 57 negotiating directly, at this time, with Ted Fischer.  
 58 He was in charge of, like, housekeeping, and he would  
 59 put together the -- this -- this -- the scope of  
 60 work, and then they were centralizing -- they had  
 61 Contract Services, I believe was the name.  
 62 That was another organization, and  
 63 Contract Services was to -- to provide all the  
 64 contracting, not -- they were taking it out of  
 65 Building Services.  
 66 Building Services would run it, would  
 67 write down what was -- what needed to be done, and,  
 68 then, I believe Contract Services, a separate group,  
 69 was in charge of asking for bids and doing the  
 70 bidding online, that kind of stuff.  
 71 Q Okay. So Contract Services, to your  
 72 Page 28

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22 understanding, was another division of Target?

23 A Yes.

24 Q And, at the point in time that this

25 new agreement was signed in 2005, you had some of

0068 your dealings with Contract Services, as opposed to

1 Building Services?

2 A Yes.

3 Q Do you recall the name of any people

4 in Contract Services that you dealt with?

5 A I cannot remember her name.

6 THE WITNESS: Do you remember her

7 name, the girl's name? Michelle.

8 MR. JIM FUNDERBURGH: It's

9 Michelle.

10 MR. PIZZO: Unless you're going

11 to object, I --

12 MS. MILLER: I object to the

13 form, and I object to the witness having a

14 conversation with somebody --

15 THE WITNESS: Okay.

16 MS. MILLER: -- who has not been

17 sworn in.

18 THE WITNESS: Michelle. It's

19 Michelle, and her middle initial was "X" something.

20 Michelle Fischer, Michelle -- Michelle.

21 It would be easy to find. I

22 don't have it --

23 Q (By Mr. Deats) Okay.

24 A -- off the top of my head.

0069 Q So somebody named Michelle, in

1 Contract Services, was one of your contact points?

2 A Yes.

3 Q Okay.

4 A Kind of. We -- we weren't -- we

5 didn't deal with her. She was -- she's a computer

6 person and was in charge -- she's in purchasing, like

7 purchasing was what she did.

8 Q Okay. And looking at Plaintiff's

9 Exhibit 4, did you -- did Jim's Maintenance have any

10 role in the negotiation of the language that appears

11 in the contract?

12 A No.

13 Q To the extent that there were changes

14 in the contract, did Target go over those changes

15 with anybody at Jim's Maintenance prior to asking you

16 to sign the new agreement?

17 A I do not know that.

18 Q But you, certainly, had no such

19 conversations?

20 A I did not, no.

21 Q And I noticed that there -- if you

22 look at Page 2 of the contract, it begins to list a

23 number of stores.

24 were these all the stores that Jim's

0070 Maintenance was to clean under this contract?

1 A Yes.

2 Q And did you keep, more or less, the

3 same stores that you had had in the past, did the

4 stores change, or what?

5 A It changed a little bit.

6 Page 29

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18 did.

19 And whenever they were doing this,

20 they were -- the questions -- we would all be on

21 conference calls and the question would be, "Okay.

22 So when will these be assigned," and the answer was,

23 "These may be assigned and they may not."

24 So we did a practice round, and, then,

25 they did not make any changes. They just left

0073 everything the same, and then they did --

1 Q Now, did Target contact you at some

2 point, approximately a year prior to this, and tell

3 you they were -- they were going to conduct a round

4 of bidding for the various stores?

5 A Yes.

6 Q And did they do that during the

7 conference call that included you and other

8 contractors, or how did that work?

9 A Yes, I believe so. Yeah.

10 Q So when you say "we were on a

11 conference call," you're talking about Target

12 representatives and the various cleaning contractors?

13 A Yeah. Yes.

14 Q And, approximately, a year prior to

15 entering this contract, then, you engaged in the

16 first round of bidding; correct?

17 A Yes.

18 Q And how did you select the stores that

19 you wanted to bid on, or did you select the stores

20 that you wanted to bid on?

21 A Yes, we did.

22 Q And when you did that first round of

23 bidding, what input, if any, did Target have into the

24 price that you bid the stores at?

0074 A None.

1 Q Okay. So you made a determination on

2 your own; correct?

3 A Yes, sir.

4 Q Okay. And after you made that

5 determination, you say that you got feedback from

6 Target?

7 A It was -- there were three rounds

8 before it was over, and you would turn in a bid and

9 then they'd send you an e-mail that said -- that had

10 all of the stores that you bid on.

11 And you had to bid on the entire

12 region. You couldn't bid like on one store in Kansas

13 City. You had to bid on the region.

14 There were forms -- lots of forms in

15 there about how many people would be in each store,

16 who the supervisors would be, how many stores the

17 supervisor would be over, who would be the regional

18 over that supervisor, and how many -- how many stores

19 he would be over, how many hours you were expected to

20 be in the store, and you would turn all of that in as

21 a packet, like an e-mail downloaded packet, and you

22 would have the pricing -- your monthly pricing.

23 You would send it in, and, then, they

24 would -- they would -- they would -- somehow they

0075 would go over all of this by computer or something

1 and then they would notify you and you would get an

2 Page 31

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7 Q And were you given any reason for the

8 change -- any reason for the change in the stores

9 that you were cleaning?

10 A No.

11 Q Do you know why Target decided to

12 change the stores you were cleaning at this point?

13 A No.

14 Q I noticed that -- if you look on Page

15 4 of the contract, there are some Houston stores

16 listed.

17 Had Jim's cleaned Houston stores

18 previously?

19 A Not Houston Targets.

20 Q Okay. Do you recall whether or not

21 Jim's was provided any reason why you were being

22 assigned to clean Houston stores?

23 A No. We -- we asked for those stores.

24 They gave them to us.

25 Q When had you asked for those stores?

0071 A Prior to this.

1 Q Okay. You had just said, "Hey, we

2 would be interested in cleaning your Houston stores,

3 too?"

4 A No. We bid on these stores.

5 Q Okay. You actually bid on the Houston

6 stores?

7 A Yes.

8 Q So the prices that are listed on Pages

9 3 -- or, actually, 2, 3, and 4 of Exhibit 4 were

10 those bid prices in all cases?

11 A Yes.

12 Q And do the prices go up or down?

13 A (No verbal response)

14 Q Did it vary from store to store?

15 A It varies from store to store. They

16 were bid on each store. We bid on different -- where

17 they were, if they were in a rough part of the market

18 or if they were in a high-end area -- different

19 prices.

20 Some of them are the same. You can

21 see where they're different size stores.

22 Q Did you continue cleaning stores, for

23 example, in the West Texas area?

24 A No. We lost those stores.

0072 Q Okay.

1 A Actually, I don't think we bid. We

2 did not bid on the West Texas stores.

3 Q When do you recall being asked to make

4 bids on stores that you wanted to clean?

5 A A year before this, maybe. They did a

6 -- they did a practice run -- they were doing this --

7 this was all by computer, where you e-mail in. They

8 -- They would send you a form, you would type in how

9 much you wanted.

10 It was three rounds. The first round

11 was -- they would send you back feedback, saying

12 you're -- you're within 15 percent, you are -- you're

13 way out there, you know, telling you how close you

14 were to the -- to other bids for that area.

15 Then, you would do it again, then you

16 would do it again. It was a practice round that we

17 Page 30

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3 e-mail back with just the pricing and it would tell

4 you if you were, you know, kind of hot or cold or,

5 you know, if you were close or not close.

6 Q Okay. Now, you said that you got a

7 packet of information from which to construct your

8 bid.

9 Did that packet indicate the number of

10 employees that were going to be required to work at

11 the store?

12 A Yes.

13 Q And did that packet -- was there any

14 ability to negotiate about the number of hours that

15 you would spend in the store?

16 A No. They just wanted, total, how many

17 people would be in the store and how many hours.

18 Q So there was a set number of people

19 and, also, a set number of hours that you were to bid

20 on?

21 A No.

22 Q Okay.

23 A They wanted -- they wanted to know --

24 when we turned our bid in, they wanted the price.

25 That was number one.

0076 Q Okay.

1 A And, then, this was like additional

2 pages that you had to fill out, and you had to fill

3 in -- they had an Excel spreadsheet, put the store

4 number and how many employees would be in the store

5 and how many hours.

6 Q Okay. Did -- did Target assign the

7 number of employees to be in the store or --

8 A No.

9 Q You were to come up with that?

10 A We were to fill all of that in, yes.

11 Q Okay. Did Target assign the hours

12 that you were to work?

13 A No.

14 Q You were to fill that in?

15 A We were to fill that in.

16 Q And was that simply an estimate of how

17 many hours you thought it would take to clean the

18 store?

19 A Yes.

20 Q And did Target indicate any price

21 range which you were to pay the employees?

22 A No.

23 Q But did they want to know that

24 information?

25 A I don't remember if they wanted that

0077 or not.

1 Q Look at Page 6 of Deposition Exhibit

2 4.

3 A (Complies)

4 Q Do you see a paragraph numbered 7,

5 "Workers Performing Services Under This Agreement"?

6 A Yes.

7 Q Now, you can see that this contains --

8 it asks you to identify the estimated number of

9 workers --

10 A Uh-huh.

11 Q -- to perform services; it asks you to

12 Page 32



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14 specify an hourly wage per hour; correct?

15 MS. MILLER: I'm going to object

16 to the form. The document reflects that this is for

17 -- to be completed for those providing services in

18 the State of California, which I don't believe you

19 have established that they were providing services in

20 the State of California.

21 MR. DEATS: Okay.

22 (By Mr. Deats) Do you know whether or

23 not you had to complete a form providing this sort of

24 information at or before the time this contract was

25 executed?

0078 A Yes, we did.

1 Q Okay. And did -- I noticed that, in

2 this particular document, that is blank. How did you

3 go about providing this information to Target?

4 A It was a separate sheet.

5 Q And was that that Excel spreadsheet

6 that you were talking about?

7 A Yes.

8 So, on an Excel spreadsheet, for every

9 store that you bid, you provided the information

10 indicated here in paragraph 7?

11 A Yes.

12 Q And did you do that before the

13 contract was awarded or after?

14 A Before. Whenever we were turning in

15 our -- our bids, it was all together in a packet --

16 an e-mail packet.

17 Q Okay. And then you would receive

18 feedback from Target, indicating whether they thought

19 your number was a good number or too high?

20 A Or very high, yes, on just the

21 pricing.

22 Q And did Target explain to you why they

23 were going through three rounds of bidding?

24 A That was to allow you to bid lower,

0079 bid lower, and bid lower. You couldn't bid up.

2 There was -- that was the rule.

3 Q And when you were awarded stores with

4 regards to the new contract, were the stores, again,

5 awarded by region or were they awarded individually?

6 A By region.

7 Q And so, looking back at Pages 2

8 through 4, you were awarded a region of Houston to

9 clean?

10 A Yes. The whole district.

11 Q And do you know what cleaning company

12 had been cleaning those stores prior to the time --

13 Custom Clean of Texas.

14 Q Okay. So looking at those Houston

15 stores as an example, when you took over from Custom

16 Clean, how did you go about obtaining employees to

17 clean these newly assigned stores?

18 A We had supervisors go down there and

19 try to round up employees, go to Albertson's, go to

20 Target, go to Wal-Mart and make contact with people.

21 Q Did you attempt to make any contact

22 with the Custom Clean employees?

23 A No, not directly.

24 Q Do you know whether or not your

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25 supervisors contacted the Custom Clean employees?

0080 A I'm sure that they did.

1 Q Okay. Do you recall whether or not a

2 lot of the Custom Clean employees that had been in

3 those stores previously continued to work for you?

4 A Most likely.

5 Q Okay. Who would be the best person,

6 do you think, to obtain that information from? Would

7 it be --

8 A Supervisor.

9 Q -- the supervisor?

10 A The Houston supervisor.

11 Q Do you recall who was the person that

12 you assigned to supervise those Houston stores?

13 A In the beginning?

14 Q Yes, sir.

15 A I don't remember.

16 Q Do you recall a gentleman by the name

17 of Valdel Vasquez?

18 A Valdel?

19 A Uh-huh.

20 A It might have been Valdel, yeah. I

21 think we brought him from San Antonio over there, to

22 help us get set up, yes.

23 Q So do you feel like he would have the

24 best information about how he went about getting

25 employees for those new --

0081 A Yes.

2 Q -- Houston stores?

3 A Yes, he would.

4 Q Do you know why you were successful in

5 obtaining those stores that had been cleaned by

6 Custom Clean previously?

7 A They didn't notify us why.

8 Q At this point in time, in 2005, was

9 Jim's continuing to provide cleaning services for

10 other than Target and Mervyn stores?

11 A I don't remember. We were cleaning

12 Marr's and then Marr's went out. We only had about

13 10 stores.

14 A So, most likely, just Target and

15 Mervyn's.

16 Q And, again, did you negotiate any of

17 the language of the contract --

18 A No.

19 Q -- that is Deposition Exhibit 4?

20 A No.

21 (Plaintiff's Exhibit No. 5 was

22 marked for identification)

23 Q (By Mr. Deats) I'm handing you a

24 document that's been labeled for identification

0082 purposes as Deposition Exhibit 5.

2 This is a document that's been labeled

3 "Target Housekeeping Scope Of Work." Do you recall

4 that document?

5 A Yes.

6 Q Was this part of the 2005 contract, if

7 you recall?

8 A I believe they incorporate the

9 wording, that it's included in the contract.

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10 Q Did you have -- play any role in

11 negotiating this document?

12 A No.

13 Q Were you given this document at or

14 prior to the time that you went through the bidding

15 process for the stores that you were awarded?

16 A I believe so.

17 Q Now, at the point in time that you

18 were awarded the 2005 contract, if you recall, did

19 Target make any change in the way it paid you for the

20 services you were providing?

21 A Not that I know of.

22 Q When you first started providing

23 services to Target, how did you go about billing them

24 for services?

25 A Oh, okay. We -- we would turn a

0083 bid -- we would turn our invoice in on -- around the

2 beginning of the month, and, then, they would pay

3 around the 20th of the -- the month.

4 Q Okay. In the month in which services

5 were performed?

6 A Yes.

7 Q So your bill for a store for January,

8 let's say, you would turn in that bill at the

9 beginning of the month?

10 A Yes.

11 Q At the beginning of January?

12 A Before the 10th. I believe she would

13 turn it in before the 10th and we would get paid on

14 about the 20th or so.

15 Q And you would be paid on January 20th

16 for services to be performed during the month of

17 January?

18 A Yes.

19 Q Did that procedure change any under

20 the 2005 contract?

21 A The payment method changed.

22 Q And how did the payment method change?

23 A They elected to -- it says, I believe

24 -- in the contract, it says that they have up to 45

25 days after the service is provided to pay, and they

0084 notified us that they elected to go ahead and do

1 that.

2 Q Okay. So were you still allowed to

3 bill early in the month for the month in which

4 services were performed?

5 A Yes.

6 Q Okay. So taking January, again, as an

7 example would you bill for January during the month

8 of January or after the end of the month of January?

9 A We could still turn it in by the 10th

10 of that month.

11 Q Okay. But did they continue to pay

12 during the month in which services were performed?

13 A No.

14 Q When, if you recall, did they start

15 paying for services after this new 2005 contract?

16 A About 45 days after the last day that

17 we were -- that we billed them for. So January,

18 whatever that would be, the 30th, they would have 45

19 days after that to pay.

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21 Q Okay.

22 A So they could skip a month -- they

23 skipped one month.

24 Q And did that create any financial

0085 hardship --

1 A Tremendous.

2 -- for Jim's --

3 A For -- yes. For all the contractors.

4 Q And why did it create a financial

5 hardship for you?

6 A There were millions of dollars that

7 weren't given to the contractor to pay their

8 employees.

9 A And was the largest part of your

10 budget your payroll?

11 A Absolutely.

12 Q By this time, what percentage of your

13 work would you say was being performed for Target?

14 A Jim's maintenance?

15 Q Yes, sir.

16 A The majority. All of it, virtually.

17 Q So was there a problem for you, then,

18 with regards to paying your employees?

19 A Yes.

20 Q Did you need to get the payment from

21 Target in order to be able to pay your employees?

22 A Yes.

23 Q As a result of the change in this

24 payment practice, do you recall whether or not you

25 had to borrow money to make payroll?

0086 A I believe so. I'm not -- I wasn't a

2 part of that, but, yes, I believe so.

3 Q Okay. Do you think that that

4 information might be better known to Bryan or Jim

5 Funderburgh?

6 A Yes.

7 (Plaintiff's Exhibit No. 6 was

8 marked for identification)

9 Q (By Mr. Deats) I'm handing you a

10 document that's been labeled for identification

11 purposes as Plaintiff's Exhibit 6.

12 MR. PIZZO: Do you have another

13 copy of that?

14 MR. DEATS: I have several copies

15 of this.

16 MR. PIZZO: Do you all have --

17 I've already -- Do you want to go off the record for

18 a minute?

19 MR. DEATS: Yeah. Let's go off

20 the record.

21 (Short break)

22 Q (By Mr. Deats) I'm handing you a

23 document that's been labeled for identification

24 purposes as Plaintiff's Exhibit 6.

25 Do you recognize that document?

0087 A Yes.

1 Q What is that document?

2 A This was our notification that we had

3 been terminated.

4 Q Okay. And what's the date of the

Page 36

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6 notification?  
 7 A The date at the top is May 22nd.  
 8 Q Okay was this the first notice you  
 9 had that your contract was about to be terminated?  
 10 A Yes.  
 11 Q Do you recall whether or not other  
 12 contractors who were working for Target were  
 13 terminated before Jim's?  
 14 A Yes. Custom Clean was terminated  
 15 before us.  
 16 Q Okay. Do you recall approximately  
 17 when Custom Clean was terminated?  
 18 A You know, I -- February, maybe.  
 19 February of 2006.  
 20 Q Okay. And how did you find out that  
 21 Custom Clean had been terminated?  
 22 A I don't remember. Through the --  
 23 supervisors had called me and said that they had been  
 24 let go.  
 25 Q Do you recall a contractor by the name  
 0088 of Sanitor?  
 1 A I heard that they had been terminated  
 2 before us, also.  
 3 A I called Custom Clean. I called Bob  
 4 and said, "what is going on," and he said, "Oh, they  
 5 let us go," and he said, "And Sanitor just picked up  
 6 80 stores and they let them go, also," because all  
 7 these -- this contract was from September.  
 8 Q And when you say "this contract,"  
 9 you're looking at Plaintiff's Exhibit 4?  
 10 A Yes. That contract was in September  
 11 of '05 and this was happening in the spring of '06.  
 12 Q Okay. And do you recall whether or  
 13 not you heard anything from individual Target store  
 14 managers prior to receiving this letter which is  
 15 Deposition Exhibit 6?  
 16 A We had heard from a Target store that  
 17 somebody was in our stores, trying to hire our  
 18 people.  
 19 Q And do you recall who -- what company  
 20 it was that was in your stores trying to hire your  
 21 people?  
 22 A I think it was Global.  
 23 Q At about the same point in time -- I'm  
 24 talking about May of 2006 -- do you recall whether or  
 0089 not you failed to receive a scheduled payment?  
 1 A We were not paid for the month up to  
 2 this date.  
 3 Q Okay. So the month prior to May 22nd,  
 4 2006, you failed to receive a payment?  
 5 A Yes.  
 6 Q And did you -- did you or anybody at  
 7 Jim's Maintenance make any calls to Target, trying to  
 8 learn why you had not been paid?  
 9 A Yes.  
 10 Q Do you recall who made that telephone  
 11 call?  
 12 A Jim -- we had called and left  
 13 messages, and they -- with Ted Fischer, and they had  
 14 gone unanswered.  
 15 And then I believe Jim called and left  
 16 Page 37

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17 a message for Mike Bell, asking what's going on, and  
 18 I think, within an hour, Ted Fischer called us and  
 19 told us that they had -- and -- and read a statement  
 20 in the contract that said that they had the ability  
 21 to withhold payment -- you know, he referred to a  
 22 paragraph in the contract, without indicating  
 23 anything else.  
 24 Q And, then, at some point, you received  
 25 this May 22nd, 2006, letter?  
 0090 A Yes.  
 1 Q Okay. Now, did you ever receive that  
 2 final payment?  
 3 A Not that I know of.  
 4 Q Do you know, approximately, how much  
 5 money was withheld?  
 6 A I -- I don't know.  
 7 Q But do you think Bryan Funderburgh or  
 8 Jim Funderburgh --  
 9 A Yes, they would know.  
 10 Q -- might know that?  
 11 A Yes.  
 12 Q What was the result of your failure to  
 13 receive that payment? were you able to pay your  
 14 employees?  
 15 A No.  
 16 Q During what period were you unable to  
 17 pay the employees that were working for you, cleaning  
 18 the Target stores?  
 19 A I would suspect the whole last month  
 20 that they worked.  
 21 Q What was the effect on Jim's  
 22 Maintenance of losing the Target contract?  
 23 A We were bankrupt.  
 24 Q At that point in time, in early 2006,  
 0091 was Jim's providing cleaning services for any entity  
 1 other than Target?  
 2 A No. Other than a school, vocational,  
 3 one building.  
 4 Q And I take it that that vocational  
 5 school was a very, very small part of your business?  
 6 A Yes.  
 7 Q And, so, when you -- at the point in  
 8 time that this contract was terminated, you were a  
 9 company that worked for Target and, essentially,  
 10 nobody else; correct?  
 11 A Yes.  
 12 Q Sort of a subsidiary of Target?  
 13 MS. MILLER: Object to the form.  
 14 (By Mr. Deats) Go ahead and answer.  
 15 A I suspect, yes.  
 16 Q How many employees did you have  
 17 employed cleaning the vocational school, if you  
 18 recall?  
 19 A I believe three.  
 20 Q Okay. Were you able even to keep  
 21 cleaning at the vocational school once you lost the  
 22 Target contract?  
 23 A I don't know. I didn't handle that.  
 24 Q Did Target ever provide you any  
 0092 explanation, other than what is in Plaintiff's  
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2 Exhibit 6, about the reason that the contract was  
 3 terminated?  
 4 A Not that I know of. Not to me.  
 5 Q And what's the reason that's listed in  
 6 the letter?  
 7 A For cause.  
 8 Q But does it specify what the cause is?  
 9 A No.  
 10 Q To this day, do you know what was the  
 11 cause that your contract was terminated?  
 12 A No.  
 13 Q Do you recall whether or not anybody  
 14 at Target ever provided you with any explanation why  
 15 they felt they had cause to terminate your services?  
 16 A They did not.  
 17 Q And did they terminate your services  
 18 at all stores that were being cleaned by you?  
 19 A All stores.  
 20 Q I want to turn now to this audit that  
 21 we talked about a little bit earlier at Price-Water  
 22 -- by Price-Waterhouse.  
 23 (Discussion held off the record)  
 24 Q (By Mr. Deats) I want to go back to  
 25 Plaintiff's Exhibit 5, the housekeeping-scope-of-work  
 0093 exhibit step.  
 1 was all of that language drafted by  
 2 Target?  
 3 A Yes.  
 4 Q Did Jim's Maintenance have any role in  
 5 negotiating the language of the scope-of-work  
 6 document?  
 7 A No.  
 8 Q Did the scope-of-work document govern  
 9 how you were to provide cleaning services to Jim's --  
 10 excuse me, to Target?  
 11 A Yes.  
 12 Q Now, going back to the audit by  
 13 Price-Waterhouse, you have indicated that you don't  
 14 recall exactly when that occurred?  
 15 A I don't know. Fall of '05, spring of  
 16 '06, somewhere -- maybe fall.  
 17 Q Well, now, the spring of '06 was when  
 18 you lost the contract with Target, is it not?  
 19 A Yes.  
 20 Q Was that audit occurring at about the  
 21 same time that you lost the contract?  
 22 A I believe -- it might have been in the  
 23 spring.  
 24 Q Okay. And when you say "in the  
 0094 spring," do you mean the spring of '05 or the spring  
 1 of '06?  
 2 A I don't know.  
 3 Q Okay.  
 4 A I remember they were here, they were  
 5 from out of the country, and they were scared of  
 6 tornados. So I believe it was in the spring.  
 7 Q When you say "from out of the  
 8 country," do you mean out of the country of Oklahoma  
 9 or out of --  
 10 A One was from Brazil, one was from --  
 11 they were from -- they were international students or  
 12 Page 39

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13 something.  
 14 Q And what was your understanding of the  
 15 purpose of the audit? why was Price-Waterhouse  
 16 auditing you?  
 17 A You know, I -- there's a document  
 18 somewhere that -- that -- that I thought Target sent  
 19 out about why they were doing it, for best practices  
 20 or to help with this or -- I don't remember.  
 21 Q Okay.  
 22 Q I didn't see it.  
 23 Q But Price-Waterhouse sent two  
 24 employees?  
 25 A Yes.  
 0095 Q And those two employees came here, to  
 1 Jim's Maintenance's headquarters?  
 2 A Yes.  
 3 Q And, if you recall, what sorts of  
 4 documents did the auditors look at?  
 5 A They looked at personnel files.  
 6 Q And anything other than personnel  
 7 files?  
 8 A I don't remember. I wasn't in charge  
 9 of that. I was in a different --  
 10 who -- who was in charge of working  
 11 with them during the audit?  
 12 A I suspect Bryan or Jim. I don't know,  
 13 but somebody answered their questions and got them  
 14 their documents. I didn't do that.  
 15 Q And was it your understanding that  
 16 Price-Waterhouse had been hired by Target to conduct  
 17 the audit?  
 18 A Yes. They were paid by Target.  
 19 Q Do you know whether or not  
 20 Price-Waterhouse made copies of any documents from  
 21 the files that they looked at?  
 22 A I -- I think they did. I believe so.  
 23 I don't remember.  
 24 Q But Bryan might better be able to  
 0096 answer --  
 1 A Yes.  
 2 -- those questions?  
 3 A Yes.  
 4 Q Do you recall whether or not  
 5 Price-Waterhouse prepared a report as a result of  
 6 their audit?  
 7 A I suspect. I don't know.  
 8 Q Okay. Do you know whether or not  
 9 Price-Waterhouse provided a report to Target  
 10 concerning their audit?  
 11 A I suspect that to be the case. I  
 12 didn't see one.  
 13 Q After the Price-Waterhouse employees  
 14 visited Jim's Maintenance headquarters here, in  
 15 Oklahoma, did they call back for any additional  
 16 information?  
 17 A I don't know.  
 18 Q Do you recall whether or not  
 19 Price-Waterhouse phoned and asked whether or not  
 20 employees of Jim's Maintenance were working extra  
 21 hours at their cleaning duties?  
 22 A I don't know.

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Q And, as we sit here today, you don't know whether or not that audit occurred before the revised 2005 contract?

A I don't -- I do not know the dates. That seems easy to ascertain, but I don't know when they were.

Q Okay. Now, you've already indicated what your role was with the company. What was Jim's role with the company?

A Owner.

Q And Bryan Funderburgh was the president?

A Yes.

Q And, at the headquarters office, you have indicated there were five employees, the three of you and Ms. Talent and one other; correct?

A And Vickie, yes.

Q Okay. And Ms. Talent and Vickie were sort of clerical support employees?

A Yes.

Q Who was primarily responsible for payroll?

A Vickie paid payroll.

Q Did Vickie set up the payroll system, if you recall?

A I don't know.

Q How -- the -- the people that provided cleaning services under your contract with Target, how were they paid?

A They were paid a shift pay.

Q What is a shift pay?

A It varied. It was \$50 a day, \$60 a day. It depended on their level of experience and what they were in charge of.

Q And, as people grew more experienced, did they occasionally receive pay raises?

A They could move up, like a carpet -- a person in charge of the carpets could move up to be in charge of the tile, and, then, the tile guy could move up to be the -- you know, lead.

Q And what was the method that was used to pay people with?

A In the beginning, we -- we mailed checks to people, but that was a terrible system. So, when they came out with being able to download, giving them a debit card, when that was first being developed a few years, we jumped onto that, and we gave them cards and account numbers, and then, they could get their money immediately, like after midnight of the day after they're -- when they were paid.

Q And when you say "cards," these are so-called CashLynk cards?

A CashLynk, I think, is the name of the company we used.

Q Okay. And, so, how did -- how was the CashLynk card used? Money is placed into an account for an employee; is that correct?

A Yes.

Q And then the employee is able to use

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field.

well, when they took it in-house, now you had stores calling Minneapolis and saying, "Hey, my floors look like -- look terrible," and the store -- all of a sudden it got harder, do you know what I mean, to -- to assess what is brand.

Q You know, Minneapolis can't see it and doesn't know what that bathroom looks like and can't visit. So they would -- they put this -- this -- they put a scorekeeping -- a scorecard together where you were assigned at the end of the month, a green score, a yellow score, or a red score --

Q Okay.

A -- to try to help alleviate these problems, trying -- the communication.

Q So the store manager would fill this out at the end of the month. He would give you a red score -- then they divided it up between -- like you would have interior, you would have the housekeeping would have five areas, maybe tile, restroom, carpets, entrance, and then they would assign us scores.

Q So that led to, "what is brand? what looks good? what doesn't look good."

Q So then they came up with this -- I mean, this is dated '05, that they tried to tell us, "Okay. This is what you're supposed to be doing. This -- if you're doing these things, then you should be doing what we're asking."

Q Just communication, I guess.

Q And if we look at Page 2 of Deposition Exhibit 7, if you look on the right-hand side of that page, it actually has the brand maintenance ratings and indicates what they represent?

A Yes.

Q There is a green, yellow, and a red score?

A Yes.

Q And that was provided to you in connection with the monthly checks that were done by Target?

A Yes.

Q Okay.

(Plaintiff's Exhibit No. 8 was marked for identification)

Q (By Mr. Deats) Now, you've mentioned a monthly scorecard. I'm handing you a document that's been labeled as Plaintiff's Exhibit 8. Does this represent an example of a monthly checklist completed for one of your stores?

A Yes.

Q And would you have one of these filled out for each of your stores each month?

A We were to -- at this time, we were to go to the store. We would have a supervisor go to the store at the end of the month and walk the store with a store team leader, the manager of the store. And then they would assign us marks.

Q give us any -- give us any feedback, and then we were to collect these, bring them back to Oklahoma City,

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the CashLynk card to obtain the money?

A Yes.

Q And does the employee go to a bank or how does the employee utilize that?

A They can go to any ATM or bank and withdraw the money.

Q Okay. And when an employee was newly hired, were you able to get that employee a CashLynk card right away?

A No. We usually waited a month, because some people would wash out, it wouldn't be what they wanted, and that -- so we would pay checks for, you know, the first month.

Q They would get two paychecks. If -- If it looked like -- you know, if they were there for a month, then our rule was then we put them on a card -- got them a card.

Q And how often were employees paid?

A Twice a month.

Q Was there a specific day of the month that you made payments?

A I believe so.

Q And what days of the month --

A I don't know.

Q -- did you make payments?

A I don't remember.

Q Does the 1st and 15th sound --

A Most likely. That sounds familiar.

MR. DEATS: Let's go off the record a second.

(Lunch Break)

(Plaintiff's Exhibit No. 7 was marked for identification)

Q (By Mr. Deats) Mr. Smith, I'm handing you a document that's been labeled for identification as Deposition Exhibit 7 and ask you to look at it and tell me -- do you recognize it?

A Yes.

Q And what is Deposition Exhibit 7?

A A Target brand pamphlet.

Q Okay. And do you recall whether or not Jim's was provided a copy of this pamphlet by Target?

A Yes, we were.

Q And, if you recall, how were you supposed to utilize this pamphlet in conducting your business?

A Prior to Building Services in Minneapolis -- before they took over from the field --

Q Uh-huh.

A -- the field representatives -- they were kind of in charge of brand. They went to the stores, they visited the stores with the contractor, and they, you know, would assess, "This is what this floor looks like. The bathroom has problems," you know.

Q So the Building Services people in the field were your contact. There was three of us.

A There was the contractor, Building Services, and then the store. So the three of us worked it out in the

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and then I -- I packaged them all up and sent them to Minneapolis.

Q Okay. And when you say you sent them to Minneapolis, you meant to Target?

A Yes.

Q Specifically, to the Building Services department?

A Yes.

Q And, then, did Target, in turn, give you some sort of a score sheet or feedback with regards to those monthly housekeeping checklists?

A Yes. They would send us a document that had all of them together. That document, yes. (Indicating)

Q So they would download -- in the beginning, we would just overnight these to them and, then, they would sit up there and download -- they would sit and give you all the scores, somebody would type them all in.

Q And then it changed to where we -- they would send us a document and we would enter them

1 and download it or e-mail it to them.

2 (Plaintiff's Exhibit No. 9 was marked for identification)

3 Q (By Mr. Deats) Okay, I'm handing you a document that's been labeled as Deposition Exhibit 9.

4 Do you recognize this document?

5 A Yes. This is --

6 Q And what is it?

7 A This is a compilation all of our stores from a document like this, where they would assign us scores, and then they were input, and if there were any comments, like "Clean walls in restrooms better" on document 8, you would see it on document 9. They would type it in out there to the right, so that --

8 Q Okay.

9 -- you could --

10 Q In the "comments" section?

11 A Yes.

12 Q Okay. And this document that's Exhibit 9 -- was this prepared by Target or prepared by Jim's Maintenance?

13 Target.

14 Q And looking at the document, I also notice that it has other things. It indicates what the chemical budget is for the store --

15 A Yes.

16 Q -- correct?

17 A Yes.

18 Q And it indicates, I guess, the actual amount that you spent during this reporting period?

19 A Yes.

20 Q And, by the way, if you look in the middle bottom of Page 1, does it have a date for this report?

21 A Yes. August 12th, 2004.

22 Q So this would be a report for when?

23 Say, July of 2004?

24 A Yes.

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16 Q And, in fact, if you look at this one  
17 column, it indicates July --  
18 A Yes.  
19 Q -- does it not?  
20 A Yes.  
21 Q And did you get this type of report on  
22 a monthly basis?  
23 A Yes.  
24 Q And the comments on the right-hand  
25 side, then, are based upon these monthly housekeeping  
0107 checklists?  
1 A Yes.  
2 Q And, then, they have the stores listed  
3 on the left-hand side, and, then, there are several  
4 categories in which you have been rated; correct?  
5 A Yes.  
6 Q And those are overall, carpet, food,  
7 tile, restroom, entrance?  
8 A Yes.  
9 Q Okay. And you received a rating on  
10 those each month?  
11 A Yes.  
12 Q Do you know whether a score card was  
13 posted in the store on the bulletin board for the  
14 stores, indicating --  
15 A Yes. Yes, it was.  
16 Q And would it have been something like  
17 Exhibit 8 or would it have been something like  
18 Exhibit 9?  
19 A Actually, it would look -- it would be  
20 that report.  
21 Q Okay.  
22 A On the front of Exhibit 7, they have  
23 an example of it --  
24 Q Uh-huh.  
0108 A -- right there.  
1 Q Okay.  
2 A That is what would be posted.  
3 Q Okay. So let's turn that so the  
4 camera can see it.  
5 A There would be a report that would be  
6 provided to the individual stores and posted on the  
7 bulletin board similar to what's at the bottom of  
8 Page 1 of Deposition Exhibit 7?  
9 A Yes.  
10 (Plaintiff's Exhibit No. 10 was  
11 marked for identification)  
12 Q (By Mr. Deats) I'll hand you a  
13 document now you may or may not recall. It has been  
14 labeled for identification purposes as Deposition  
15 Exhibit 10.  
16 It purports to be a copy of a series  
17 of e-mails. The date in the lower, right-hand corner  
18 of Page 1 is July 16th, 2001.  
19 Q Do you recall this e-mail?  
20 A Yes.  
21 Q What were the circumstances under  
22 which you received this e-mail?  
23 MR. PIZZO: Well, I'm going to  
24 have to object. Is it actually e-mailed to --  
0109

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12 Q Yes.  
13 A -- that, you know -- this is my  
14 document. I made this. I -- this is my document,  
15 and then I put in -- that's Target's feedback on if  
16 we were competitive on the bid or noncompetitive on  
17 the bid.  
18 Q Okay. So you received a separate  
19 document from Target, indicating whether you were  
20 competitive or noncompetitive on the bids that you  
21 had made for these various stores?  
22 A Yes. And so -- you can see the bid,  
23 the dark -- that's what we turned in.  
24 Q Okay.  
25 A And, then, I was putting this  
0112 together. I put -- that's what we were paid, was the  
1 -- in 2005.  
2 Q Uh-huh.  
3 A That's what our current contract in  
4 2005 -- that's what it was. So I was just marking  
5 the difference so, in-house, Jim, Bryan, and I would  
6 know what we're bidding and what -- you know, where  
7 we're at -- where it stands with what we're currently  
8 getting.  
9 Q And, then, the feedback that you got  
10 back -- I see, in that right-hand column on Page 1 of  
11 Exhibit 11, the word "competitive" and some  
12 "noncompetitive" and others "very noncompetitive"?  
13 A Yes.  
14 Q Do you see, on Page 1, a listing for  
15 Overland Park store?  
16 A Yes.  
17 Q And where was Overland Park located?  
18 A That is in Missouri -- Overland Park,  
19 Kansas. No.  
20 THE WITNESS: Overland Park is in  
21 Kansas or Missouri?  
22 MR. JIM FUNDERBURGH: Missouri.  
23 THE WITNESS: Okay.  
24 MS. MILLER: I would object. The  
0113 witness is asking questions of other people who are  
1 not under oath.  
2 Q (By Mr. Deats) Just tell me what you  
3 recall.  
4 A It's in the Kansas City market.  
5 Q Okay. Your 200- -- had you been  
6 cleaning that store in 2005?  
7 A Yes.  
8 Q And the price that you had been  
9 charging was \$18,975? Is that what shows in the  
10 column under 2005?  
11 A That's what Target had been paying us.  
12 Q Okay. You made a new bid, did you  
13 not, according to this document, of \$16,667 --  
14 A Yes.  
15 MR. PIZZO: Objection.  
16 (By Mr. Deats) Excuse me. 600 --  
17 16,250?  
18 A Yes.  
19 Q Okay. And the feedback you got from  
20 Target was that was very noncompetitive?  
21 A Yes.

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1 THE WITNESS: Yeah, I'm on there.  
2 MR. PIZZO: -- Mr. Smith?  
3 Q (By Mr. Deats) Actually, this is  
4 addressed to Ruth Talent, is it not?  
5 MR. PIZZO: Well, his name is in  
6 the "to." There's a whole bunch of people in there.  
7 MR. DEATS: Okay.  
8 MR. PIZZO: I suspect that there  
9 is a Trent Smith in there somewhere.  
10 Q (By Mr. Deats) Okay. And you're  
11 pointing, on the "to" line. The second-to-the-last  
12 line under the "to" column, you see a Trent Smith; is  
13 that correct?  
14 A Yes.  
15 Q So you did receive a copy of this?  
16 A Probably, yes.  
17 Q And, then, Ruth Talent's name is up in  
18 the upper left-hand corner of the document; right?  
19 A Yes.  
20 Q Does that indicate possibly that it  
21 was printed from her machine or that she received the  
22 e-mail, too, if you know?  
23 A I guess. I don't know.  
24 Q Okay.  
25 A I don't know why her name is on there.  
0110 Q What do you recall about this e-mail?  
1 A Let me read it.  
2 This was whenever they went from --  
3 when they contracted from 200 -- 200 housekeeping  
4 contractors to just this list right here, where it  
5 says the "to." This is the group of 25 or so  
6 contractors that were awarded stores in that change.  
7 Q Okay.  
8 A And so they're -- this is explaining,  
9 "This is how you're going to interpret the -- the  
10 start date and when they should -- incoming (sic)  
11 contractor should have his stuff out by this time and  
12 you can start moving your equipment in by this time."  
13 Q So this was given to you in  
14 conjunction with the awarding of the 2001 contracts?  
15 A Yes.  
16 (Plaintiff's Exhibit No. 11 was  
17 marked for identification)  
18 Q (By Mr. Deats) I'm going to hand you  
19 a document now that's been labeled for identification  
20 purposes as Plaintiff's Exhibit 11.  
21 It's a two-page exhibit, and ask you  
22 to look at this and tell me, do you recognize this  
23 document?  
24 A Yes.  
0111 Q What is it?  
1 A This is feedback from that round of  
2 bidding in 2005.  
3 Q Okay. And when you say "feedback,"  
4 feedback from whom to whom?  
5 A Yes. This is from Target -- this would be  
6 from Michelle Moore's office, where we e-mailed this  
7 -- this document -- this Excel spreadsheet document  
8 with our bid, how much we were bidding, and what --  
9 her -- the -- the notification, the competitive and  
10 noncompetitive --  
11

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23 Q That was even though it was more than  
24 \$2,000 less per month than you had charged  
25 previously?  
0114 A Yes.  
1 Q Similarly with the Shawnee store, you  
2 put in a bid of 15,833, had been receiving 17,407,  
3 and were told that was noncompetitive?  
4 A Yes.  
5 Q As a practical matter -- matter, did  
6 you feel, in this bidding process, that you could, in  
7 fact, attempt to increase the amount you were  
8 obtaining per store for your cleaning services?  
9 A (No verbal response)  
10 Q Did you understand my question?  
11 A The -- there was an e-mail that was  
12 sent to us that said, "You cannot bid more than your  
13 last bid."  
14 Q Was that sent before or after the  
15 first round of bidding?  
16 A Before.  
17 Q Okay. So before the first round of  
18 bidding, you received an e-mail that said you could  
19 not charge more than you currently were charging?  
20 A No. No. No. It said that, "You  
21 can't bid more than your previous bid."  
22 We -- there are others on here where  
23 we bid a little bit more. Like we didn't -- Wichita  
24 East, if you look at 92 --  
25 0115 Q Uh-huh.  
1 A -- we bid more.  
2 A And I don't know what round of bidding  
3 this was. You know, I'm not sure if this was our  
4 first, our second, or our final bid, what we turned  
5 in here, and it's not marked.  
6 Q Okay.  
7 A So, no. You could bid more, and we  
8 did.  
9 Q Okay. And, in each subsequent round  
10 of bidding, were you allowed to increase your bid --  
11 A No.  
12 Q -- at that point?  
13 A You were not, no. Now, that was --  
14 that was part of the rules of bidding, you cannot bid  
15 more than your previous bid.  
16 Q Okay. As a practical matter, were you  
17 able ultimately to achieve a price for a store that  
18 was more than you had cleaned it the previous year?  
19 A I don't know. I don't -- I don't have  
20 -- you would know if we had the contracts. I don't  
21 -- you know, it would show.  
22 Q So we could compare the 2005 contract  
23 with the prior contract and then we would know?  
24 A Yes. That's right.  
0116 Q As we sit here today, do you recall  
1 actually achieving a higher price for a store than  
2 you had received previously?  
3 A I don't know. We could have. I know  
4 that we didn't get more than what we were net,  
5 because when you're bidding, you're, you know --  
6 you're trying to -- we didn't net more -- but that  
7

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8 was our own bid.  
 9 Q So the overall price that you were  
 10 able to achieve was something less than the price you  
 11 had done previously?  
 12 A Yes.  
 13 Q And that was at the end of the third  
 14 round of bidding when you actually received the  
 15 stores you were going to get?  
 16 A That would be the 2005 contract, the  
 17 September 2005 contract.  
 18 Q So the -- the end result for you of  
 19 this bidding process was to lower the overall amount  
 20 you were getting for cleaning Target stores?  
 21 A Yes.  
 22 Q Now, you mentioned that, in the Excel  
 23 spreadsheet that you were able to fill out, that you  
 24 were actually able to list the number of employees  
 25 you planned to use; is that correct?  
 0117  
 1 A Yes.  
 2 Q Now, were there any limitations on the  
 3 number of employees that you could list on this  
 4 bidding sheet?  
 5 A No.  
 6 Q For example, had you ever received  
 7 from Target any information about a minimum number of  
 8 employees you were expected to use to clean a Target  
 9 stores.  
 10 A Just from store managers.  
 11 Q And what had store managers told you?  
 12 A That you had to have three people or  
 13 more in the store.  
 14 Q And was that with regards to -- now,  
 15 there are Target stores and there are Super Target  
 16 stores; right?  
 17 A Right. That's regular-size Targets.  
 18 Q Okay. And what -- what is a Super  
 19 Target as opposed to a regular-size Target?  
 20 A It has groceries. It's like two  
 21 stores.  
 22 Q And so you had been told, with regards  
 23 to regular Target, a minimum of three employees?  
 24 A Yes.  
 25 Q With regard to Super Targets, had  
 0118  
 1 store managers ever indicated to you a minimum number  
 2 of employees you were expected to use?  
 3 A Not as strongly, but five. They  
 4 wanted five people in there minimum.  
 5 Q As a practical matter, did you feel,  
 6 in the bidding process of 2005, that you could list  
 7 less than three employees --  
 8 A No.  
 9 Q -- to clean Target?  
 10 A No.  
 11 Q Did you feel like you could list less  
 12 than five employees to clean a Super Target?  
 13 A No.  
 14 Q Now, when you went through this  
 15 bidding process in 2005, the other 24 cleaning  
 16 contractors were allowed to bid on your stores, were  
 17 they not?  
 18 A You could bid on any store -- any  
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19 district. They wanted you to bid by district. Not  
 20 by individual store, but by district. You could bid  
 21 anywhere you wanted.  
 22 Q And you were aware that other cleaning  
 23 contractors might be bidding on your stores?  
 24 A Absolutely.  
 25 Q Did that have any impact on you and  
 0119  
 1 your ability to create bids for the stores?  
 2 A It affected our bidding.  
 3 Q How did it affect your bidding?  
 4 A Well, where we are already owed a  
 5 tremendous amount of money for equipment and had a  
 6 large investment, we bid low. If we could even break  
 7 even, it would be better than losing that store.  
 8 Q Okay. Now, as you entered into the  
 9 bidding process -- you indicated there were three  
 10 rounds of bidding?  
 11 A Yes.  
 12 Q When -- when you engaged in the first  
 13 round of bidding, were you told that that was a first  
 14 round of bidding?  
 15 A Yes.  
 16 Q Did you know, at the time you made  
 17 your first bids, that there might be subsequent  
 18 rounds of bidding?  
 19 A Yes.  
 20 Q And how did you find that out?  
 21 A They told us, "This is Round 1 of  
 22 three rounds."  
 23 Q Were you -- did they indicate to you  
 24 that it was any type of a practice round?  
 25 A No, not the first time. It ended up  
 0120  
 1 being.  
 2 Toward the very end, like a week  
 3 before -- we had already done the bids. The bids,  
 4 you know -- and this was the third one we're going to  
 5 turn in, I believe, and everybody was really nervous.  
 6 I mean, there was millions and millions of dollars at  
 7 stake.  
 8 And somebody, on a conference call,  
 9 said, "Okay. Now when you receive these bids, what  
 10 day -- when will they be awarded," and Michelle, on  
 11 that -- on the conference call, said, "Well, as you  
 12 can see and if you read your bid packet, it says that  
 13 we may choose to accept these bids or we may not," or  
 14 something.  
 15 Q So even with regards to the third  
 16 round of bidding, you didn't know if that was going  
 17 to be the final round?  
 18 A No. Now, she tipped us off, because  
 19 you would have thought anybody would have said,  
 20 "Well, yes," but because she backpedaled and said,  
 21 "We need your best bid. We need your best bid,  
 22 because we could enforce this" or --  
 23 Q Do you know what the purpose was of  
 24 not telling you when the final bidding was going to  
 25 occur?  
 0121  
 1 A I -- they were just -- it was maybe  
 2 the first time they had done it, this reverse -- it  
 3 was the first time with housekeeping they had done  
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4 it, but I don't know what they were doing.  
 5 They just gathered a bunch of  
 6 information from everybody on how many people you're  
 7 going to use, how many district supervisors, how many  
 8 stores, how they would be supervising.  
 9 And they gathered a lot of  
 10 information, what potential bidding -- what it was  
 11 going to cost them if they did enact this, I guess.  
 12 I don't know. But they -- they did not accept any of  
 13 those.  
 14 MR. DEATS: Why don't we go off  
 15 the record a moment for the purpose of changing the  
 16 videotape.  
 17 (Short Break)  
 18 Q (By Mr. Deats) Ultimately, did this  
 19 process have the effect of forcing your prices down?  
 20 A I guess -- yes.  
 21 MR. PITZCO: You don't have your  
 22 mike on. You had better ask that question again.  
 23 Q (By Mr. Deats) Ultimately, did this have  
 24 the effect of forcing your prices down?  
 0122  
 1 A Yes.  
 2 (Plaintiff's Exhibit No. 12 was  
 3 marked for identification)  
 4 Q (By Mr. Deats) I'm handing you a  
 5 document that's been labeled for identification  
 6 purposes as Deposition Exhibit 12.  
 7 You had indicated that you paid  
 8 employees -- or paid the people that did the cleaning  
 9 services for you primarily as -- by means of CashLynk  
 10 cards; correct?  
 11 A Yes.  
 12 Q Does this document relate to the  
 13 CashLynk cards?  
 14 A Yes.  
 15 Q What type of document is this?  
 16 A I guess this is an account history of  
 17 an individual -- of one account.  
 18 Q Up at the top left-hand corner of Page  
 19 1, it says "CashLynk Report"; correct?  
 20 A Yes.  
 21 Q And you can see, in the upper  
 22 right-hand corner, it says "Page 1 of 3."  
 23 So this would have been a report --  
 24 would this be the report of the use of an individual  
 25 CashLynk card or what?  
 0123  
 1 A Yes. Yes. Yes.  
 2 Q Did you receive one of these with  
 3 regards to each of the CashLynk cards that you gave  
 4 out each month?  
 5 A I -- I don't think that we printed one  
 6 for each month, no.  
 7 Q Okay.  
 8 A You might go on there to look -- if  
 9 somebody had a question, you could go on there and  
 10 pull this up and see -- see what happened.  
 11 Q And you can see like the total amount  
 12 that's been deposited into that account; correct?  
 13 A Yes.  
 14 Q You can see a total amount that's been  
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15 withdrawn from the account; correct?  
 16 A Yes. Yes.  
 17 Q And -- and if you go down, you can  
 18 actually see the dates and the locations where  
 19 withdrawals were made; correct?  
 20 A Yes.  
 21 Q And how much was withdrawn and what  
 22 type of service fee was charged?  
 23 A Yes.  
 24 Q And so were -- did you have access to  
 25 records that would indicate this for each of the  
 0124  
 1 people to whom you gave CashLynk cards?  
 2 A Jim's Maintenance did.  
 3 Q Okay. And I -- I slip and say "you" a  
 4 lot.  
 5 A Yeah. If I needed this, I could go to  
 6 Vickie's office and get on her computer and pull --  
 7 or she could pull it up for me and show me that.  
 8 As we sit here today, does Jim's  
 9 Maintenance still have access to all of these  
 10 records?  
 11 A I do not know that.  
 12 Q Okay. But you have provided all of  
 13 the records that you have, both to the attorneys for  
 14 the defendants and to the attorneys for the  
 15 plaintiffs, have you not?  
 16 A I suspect that to be the case.  
 17 Q Okay.  
 18 A That wasn't -- I wouldn't be the  
 19 person to ask --  
 20 Q Do you know whether or not you have  
 21 complete records of all of the payroll transactions  
 22 that occurred during the last three or four years  
 23 that you were in operation?  
 24 A I don't know that. I would guess  
 25 that, but I don't -- I -- that's not my -- what I was  
 0125  
 1 in charge of.  
 2 Q Okay.  
 3 (Plaintiff's Exhibit No. 13 was  
 4 marked for identification)  
 5 Q (By Mr. Deats) I'm handing you a  
 6 document that's been labeled for identification  
 7 purposes as Plaintiff's Exhibit 13.  
 8 Do you recognize this document?  
 9 A Yes.  
 10 Q What is this document?  
 11 A This is a payroll time sheet.  
 12 Q Is this a Jim's Maintenance document?  
 13 A Yes.  
 14 Q Do you know who created this document?  
 15 A I did.  
 16 Q Now, you indicated earlier that  
 17 employees were paid on a daily basis; correct?  
 18 They were paid shift pay. They were  
 19 paid twice a month.  
 20 Q Okay. And when you say "shift pay,"  
 21 you indicated a rate of "x" dollars per day?  
 22 A Yes.  
 23 Q And was this a method used by Jim's to  
 24 determine the number of days that an individual  
 25 employee worked?



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0126 A Yes.  
 1 Q And were these payroll time sheets  
 2 maintained at each store -- Target store --  
 3 A Yes.  
 4 Q -- where Jim's provided services?  
 5 A Yes.  
 6 Q And the employees were expected to  
 7 complete the time sheet to indicate the days that  
 8 they had worked?  
 9 A Yes.  
 10 Q And, then, these time sheets were  
 11 turned in on a monthly basis, a bi-monthly basis,  
 12 what?  
 13 A They were faxed into the payroll  
 14 office on the 1st and 16th.  
 15 Q And then payroll was based upon these  
 16 records?  
 17 A Yes.  
 18 Q Do you know whether or not Jim's  
 19 Maintenance still has an accurate copy of all the  
 20 payroll time sheets for the last three or four years?  
 21 A I do not know that.  
 22 Q Other than these payroll time sheets,  
 23 did Jim's Maintenance utilize any other type of time  
 24 record to determine payroll?  
 25 A No.  
 0127 Q And who was responsible for faxing  
 1 these records into the payroll office on the 1st and  
 2 the 16th?  
 3 A The district supervisor was ultimately  
 4 responsible for -- make sure that it was done.  
 5 You know, a guy might have eight stores that he  
 6 supervises, and he would go around and check every  
 7 day or -- you know, and make sure that these were all  
 8 up to date.  
 9 They couldn't just -- you know, you're  
 10 not supposed to fill it out on the last day of the  
 11 month, but keep these accurately filled out, and he  
 12 was responsible.  
 13 Now, the -- now, who faxed it in -- it  
 14 could have been the lead guy or it could have been --  
 15 almost 90 percent of the time, it was the district  
 16 supervisor who faxed them in.  
 17 Q So let's talk a little bit about the  
 18 hierarchy at Jim's Maintenance. You, obviously, had  
 19 the people in the central office that you have  
 20 already indicated, correct?  
 21 A Yes.  
 22 Q And, then, what was the next line of  
 23 supervision?  
 24 A You had regional -- two regional guys,  
 25 one handled the north, one handled the south, and,  
 0128 then, below them -- they had district supervisors  
 1 underneath them, and each one of them had about eight  
 2 stores.  
 3 Q Okay. Now, the regional managers, who  
 4 were they?  
 5 A Rob Mythen handled the north, which  
 6 would be Oklahoma and Kansas and Missouri and  
 7 Arkansas, and, then, for a time period, it was  
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11 Brandon Stewart handled Texas, New Mexico, and, then,  
 12 after Brandon, we had Alex.  
 13 Q Okay. Now, you say Brandon Stewart  
 14 handed -- handled Texas and New Mexico. Would he  
 15 have been the person responsible for San Antonio and  
 16 Austin stores?  
 17 A Yes. He would have been the regional  
 18 manager.  
 19 Q And do you know where Mr. Stewart is  
 20 located?  
 21 A As far as I know, he lives in Dallas,  
 22 Texas.  
 23 Q Do you know what Mr. Stewart is doing  
 24 these days?  
 25 A I -- somebody told me he's working in  
 0129 the car business.  
 1 Q And, if you know, approximately, how  
 2 many district supervisors did Brandon Stewart have  
 3 working for him? Do you have any idea?  
 4 A Five to six.  
 5 Q And who were the district supervisors,  
 6 that you recall, in San Antonio and Austin?  
 7 A Valdel was a -- a district supervisor  
 8 for a while. We had a -- I can't remember the names.  
 9 Q Do you recall a woman by the name of  
 10 Elvia Riojas?  
 11 A Yes. Elvia was a supervisor for San  
 12 Antonio.  
 13 Q And, as we sit here today, do you  
 14 recall any others?  
 15 A Not off the top of my head.  
 16 Q You -- you will have a chance to look  
 17 over your deposition, if you want, and amend it, and  
 18 if any other names occur to you --  
 19 A Uh-huh.  
 20 Q -- if you would just supplement your  
 21 deposition by writing those in. There will be an  
 22 errata sheet for you to do that.  
 23 Okay?  
 24 A Okay.  
 0130 MS. MILLER: And I'm going to  
 1 object to that. That -- I mean, he has the right to  
 2 read and sign, which I don't know that we actually  
 3 discussed it prior to this, but he doesn't have the  
 4 right to supplement his testimony or change his  
 5 answers.  
 6 So I think you have inaccurately  
 7 instructed him on that.  
 8 Q (By Mr. Deats) Okay. Well --  
 9 MR. PIZZO: We will provide --  
 10 Q (By Mr. Deats) -- would you --  
 11 MR. PIZZO: We will provide the  
 12 names one way or the other. If he or anybody else  
 13 that you ask the question for, if they come up with  
 14 the information, we will supply it to all parties.  
 15 MS. MILLER: Certainly, we can  
 16 have that agreement --  
 17 MR. PIZZO: Yeah.  
 18 MS. MILLER: -- but it wouldn't  
 19 be reflective of him testifying to that --  
 20 MR. PIZZO: Right.  
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22 MS. MILLER: -- in the deposition  
 23 transcript.  
 24 MR. PIZZO: Not necessarily in an  
 25 -- in an errata sheet or something, but we can do it  
 0131 by e-mail or something to that effect.  
 1 Q (By Mr. Deats) Do you recall an  
 2 Austin district supervisor by name of Sam Salazar?  
 3 A Yes.  
 4 Q Do you know where Mr. Salazar is these  
 5 days?  
 6 A No.  
 7 Q Now, you indicated that these Jim's  
 8 Maintenance payroll time sheets were faxed in. Do  
 9 you know what fax machines were used to fax these to  
 10 the Jim's Maintenance headquarters?  
 11 A You could use Target's. They -- they  
 12 were all -- we had -- all Targets have a fax machine  
 13 that we were allowed to use, or the district  
 14 supervisor -- every district supervisor had a fax  
 15 machine, also.  
 16 Q Okay. Now, looking at this as an  
 17 example, this is for the second half of June 2005;  
 18 right?  
 19 A Yes, sir.  
 20 Q So when --  
 21 MR. PIZZO: Can -- can I ask you  
 22 just to clarify what store we're talking about?  
 23 Q (By Mr. Deats) And --  
 24 MR. PIZZO: 771. I'm sorry.  
 0132 Q (By Mr. Deats) The store we're  
 1 talking about is 771; correct?  
 2 A Yes.  
 3 Q And that would be the store on  
 4 Military Highway in San Antonio?  
 5 A The south side of San Antonio.  
 6 MR. PIZZO: I didn't know what  
 7 "Military" was. I'm sorry.  
 8 THE WITNESS: That's the street.  
 9 MR. PIZZO: I'm not familiar  
 10 with --  
 11 Q (By Mr. Deats) So, when this payroll  
 12 would be turned in, it would be turned in sometime  
 13 after June 30th; correct?  
 14 A On the 1st.  
 15 Q And when would the employees be paid  
 16 for the work that was done the last half of June?  
 17 A I believe that they were usually paid  
 18 within -- within 20 days, within 15 days. I don't  
 19 know exactly.  
 20 Q So payments for work done actually  
 21 lagged about -- a couple of weeks behind?  
 22 A Yes. They -- as soon as she received  
 23 it on the 1st, the day after they worked, she would  
 24 start processing it, and it took about -- you know,  
 0133 it took two weeks to get it done and then loaded.  
 1 A All these -- these would be loaded --  
 2 it should say when the deposits were made.  
 3 Q Now, were employees paid a set amount  
 4 for a half-month of work, or were they --  
 5 A No. They were paid a daily rate, like  
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7 a shift pay.  
 8 Q So that daily -- so the amount they  
 9 were paid for -- for a half-month pay period, then,  
 10 would depend on the number of work days --  
 11 A Yes.  
 12 Q -- in that pay period?  
 13 A Yes.  
 14 Q Now, was there any provision made for  
 15 the payment of overtime pay if an employee worked  
 16 more than 40 hours?  
 17 A No.  
 18 Q And why not?  
 19 A They were expected to get their job  
 20 done and out of there around, you know, 6:30, 7:00 in  
 21 the morning.  
 22 Q So employees were expected to be able  
 23 to perform the work they needed to perform in a  
 24 40-hour workweek?  
 25 A Yes.  
 0134 Q Did Jim's become aware, at some point  
 1 in time, that employees, in fact, were working more  
 2 than 40 hours in a week?  
 3 A I don't know.  
 4 Q You, personally, were not aware of it?  
 5 A I, personally, was not aware of it,  
 6 and it didn't matter. They were being paid shift  
 7 pay.  
 8 Q And when you say "they were being paid  
 9 shift pay," what do you mean by that?  
 10 A They were being paid -- I don't  
 11 remember the exact numbers. It might be \$50 a day or  
 12 it may be \$70 a day, and if they worked 10 days that  
 13 would be -- 50 times 10 -- \$500.  
 14 Q And who was responsible for setting  
 15 that daily rate? Was that something that you did or  
 16 some other employee at Jim's?  
 17 A I came up with the -- I guess, yeah.  
 18 I mean, I -- it was all of us. It was a group, you  
 19 know, trying to figure out a budget. The district  
 20 supervisor -- I would work with the district  
 21 supervisor and the regional supervisor and we would  
 22 try to set a budget and find out -- and people were  
 23 paid on their experience.  
 24 Q Did you have occasional meetings with  
 0135 your district supervisors?  
 1 A Yes.  
 2 Q Would you travel to their locations  
 3 for those meetings, or did you have group meetings at  
 4 the headquarters office?  
 5 A Both.  
 6 Q How often did you bring your district  
 7 supervisors up to the Oklahoma headquarters, would  
 8 you say?  
 9 A Three or four times a year.  
 10 Q How often would you go into the field  
 11 to meet with them in the locations where they worked?  
 12 A Six or seven times a year, maybe more.  
 13 you know, it depended on what was happening in their  
 14 market, if they were having difficulties.  
 15 Q I want to go through a number of other  
 16 types of payroll records with you and see if you can  
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18 tell me about them.  
 19 (Plaintiff's Exhibit No. 14 was  
 20 marked for identification)  
 21 Q (By Mr. Deats) This is Plaintiff's  
 22 Exhibit 14. Do you recognize this document?  
 23 A It appears to be a deposit report from  
 24 one of our monthly -- you know, bi-monthly payments,  
 25 it looks like.  
 0136  
 1 Q Okay. And if we look -- I guess,  
 2 that, in the left-hand column, that's the number of  
 3 the CashLynk card assigned to the employee?  
 4 A No. I think it -- it's probably on  
 5 the right.  
 6 Q Oh, okay.  
 7 A Do you see -- beside the name.  
 8 Q Yeah. I sure do.  
 9 So it lists the employee's name on the  
 10 right, and, then, the CashLynk card next to that,  
 11 going left; right?  
 12 A That's what it appears to me.  
 13 Q Okay. And what do the other columns  
 14 represent?  
 15 A I -- I don't know.  
 16 A You don't --  
 17 I'm guessing. That far left one looks  
 18 like just a -- just a transaction number.  
 19 Q Okay. And, then, the next column  
 20 over, is that the amount of the deposit?  
 21 A Yes.  
 22 Q And, then, the next one over, that  
 23 says "cash" --  
 24 A Uh-huh.  
 25 Q -- what does that mean, if you know?  
 0137  
 1 A I don't -- I don't know. I guess that  
 2 means cash. That it was -- that it wasn't a credit  
 3 or anything.  
 4 Q And, then, a couple of columns over  
 5 there is a date. Does that indicate the date of  
 6 deposit?  
 7 A That's what it appears to be.  
 8 Q And, then, the next column over  
 9 indicates that it was deposited for purposes of  
 10 payroll?  
 11 A Yes.  
 12 Q And what use, if any, did Jim's make  
 13 of these documents? Just to keep track of how much  
 14 money you were depositing into employees' accounts?  
 15 A Right. And, I guess, if anybody  
 16 called, you could tell them, you know, what day and  
 17 how much was deposited.  
 18 Q Do you know whether or not Jim's still  
 19 maintains all of these records?  
 20 A I do not know.  
 21 (Plaintiff's Exhibit No. 15 was  
 22 marked for identification)  
 23 Q (By Mr. Deats) I'm handing you a  
 24 document that's been labeled for identification  
 25 purposes as Plaintiff's Exhibit 15.  
 0138  
 1 Do you recognize this document?  
 2 A Payroll check register.  
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3 Q Okay. Is this a document that Jim's  
 4 used in keeping track of payments to its employees?  
 5 A This appears to be checks that were  
 6 cut, not -- not downloaded -- not -- not put on a  
 7 card.  
 8 This would have been prior to that or  
 9 people who were not on a card.  
 10 Q Okay. And so -- the date on this  
 11 particular payroll report -- and you can see it's  
 12 Page 1 of, possibly, a multi-page report -- is June  
 13 15 -- June 14, '04; correct?  
 14 A Yes.  
 15 Q And you believe that this would  
 16 represent people that were paid by check, rather than  
 17 by CashLynk card?  
 18 A Yes.  
 19 Q And you've already indicated that you  
 20 paid people by check during the first month of their  
 21 employment?  
 22 A Yes.  
 23 Q And with a check date of June 15th,  
 24 2004, would that indicate payment for the previous  
 25 pay period, or do you know?  
 0139  
 1 A I'm guessing that that would be the  
 2 previous month, that was turned in on the 1st.  
 3 Q So this might represent payment for  
 4 the period -- the last half of May of 2004?  
 5 A It may be May 16th to May 30th. I  
 6 don't know.  
 7 (Plaintiff's Exhibit No. 16 was  
 8 marked for identification)  
 9 Q (By Mr. Deats) I'm handing you a  
 10 document that's been labeled for identification as  
 11 Plaintiff's Exhibit 16.  
 12 Do you recognize this type of  
 13 document?  
 14 A Yes.  
 15 Q And what was this document used for?  
 16 A It appears to be direct deposit.  
 17 Q Would this, again, indicate a deposit  
 18 made into, for example, a CashLynk account?  
 19 A Possibly.  
 20 Q But you're not sure as we sit here  
 21 today?  
 22 A No. It doesn't say "CashLynk" on it.  
 23 I -- we may have tried another company out prior.  
 24 This is a little bit earlier than that one. That one  
 25 is a June -- well, that was payroll.  
 0140  
 1 That's May of '04, on that one, and  
 2 this was January '04. I -- I don't know.  
 3 Q So you probably -- so it's possible  
 4 that this just represents the use of a different  
 5 company?  
 6 A Possibly.  
 7 MR. PIZZO: Can we go off the  
 8 record for a minute?  
 9 MR. DEATS: Sure.  
 10 (Short discussion held off the  
 11 record)  
 12 Q (By Mr. Deats) So, again, this would  
 13 indicate deposits to CashLynk accounts?  
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14 A I believe so. These -- these account  
 15 numbers all look very similar. So it's to a card.  
 16 Q And I notice that the amount is listed  
 17 in two separate places on each document.  
 18 A Do you know why that is?  
 19 A No.  
 20 Q Now, this audit report is dated  
 21 January 29th, '04; correct?  
 22 A Yes.  
 23 Q And it indicates a date of deposit  
 24 into each of these individual accounts of January  
 25 15th, '04?  
 0141  
 1 A Yes.  
 2 Q If you know, what time -- what pay  
 3 period would these payments cover?  
 4 A I'm thinking this would have been the  
 5 last half of December of '03, like December 16th  
 6 through December 31st.  
 7 (Plaintiff's Exhibit No. 17 was  
 8 marked for identification)  
 9 Q (By Mr. Deats) I'm handing you a  
 10 document that's been labeled for identification  
 11 purposes as Plaintiff's Exhibit 17.  
 12 Again, this is a payroll document  
 13 submitted pursuant to the order of confidentiality,  
 14 but do you recognize this document?  
 15 A Yes.  
 16 Q Is this a Jim's Maintenance document?  
 17 A Yes.  
 18 Q And how did Jim's Maintenance utilize  
 19 these documents?  
 20 A Vickie would give us the amount that  
 21 we paid, the net pay, and then we could compare it to  
 22 what we had budgeted.  
 23 Q You know, under "Net Pay," it says  
 24 2300 for the first store --  
 25 Uh-huh.  
 0142  
 1 A -- for 174 Marbach. We had budgeted  
 2 \$2,100. So the supervisor is over whatever that  
 3 difference is. \$200. He would be over -- he's over  
 4 budget \$200.  
 5 Q Did this document -- this type of  
 6 document have any particular name?  
 7 A Payroll report.  
 8 A No. I don't know if it has a  
 9 particular name.  
 10 Q But this was a document maintained  
 11 internally by Jim's Maintenance?  
 12 A Yes.  
 13 Q It was for purposes of keeping track  
 14 of employees' salaries?  
 15 A Yes, budget. Uh-huh. Yes.  
 16 Q And this purports to list a day/hour  
 17 rate; correct?  
 18 A Yes.  
 19 Q And was that the daily rate that you  
 20 were paying to the various employees?  
 21 A Pretty much. Cutting close.  
 22 Q And then it has a column for gross  
 23 salary and a column for net pay, does it not?  
 24 A Yes.  
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25 Q And I noticed that, with regards to  
 0143  
 1 each of the employees, the gross salary and the net  
 2 pay is the same, is that correct?  
 3 A These all appear to be that way.  
 4 Q Okay. Did Jim's Maintenance consider  
 5 the individuals who worked, providing cleaning  
 6 services in the Target stores, to be employees of  
 7 Jim's?  
 8 A Cleaners, daily cleaners.  
 9 Q So did you consider them to be  
 10 independent contractors working for you, or what?  
 11 A I didn't consider any of that. They  
 12 were daily cleaners hired, as a shift pay.  
 13 Q Okay. And do you know whether or not  
 14 any provision was made for withholding taxes from  
 15 their pay?  
 16 A I do not know.  
 17 Q And looking in the lower left-hand  
 18 corner, you see a Target payroll, May 15, 200- --  
 19 '05.  
 20 Q -- 5?  
 21 Okay. Does that indicate when this  
 22 payroll report was actually run?  
 23 A No. I don't think so.  
 24 I think that that was payroll on the  
 25 15th.  
 0144  
 1 Q Okay. And do you -- so if the payroll  
 2 was made on the 15th, do you know what pay period  
 3 this would represent payment for?  
 4 A It doesn't say. I don't know.  
 5 Q If payment was made on May the 15th,  
 6 2005, would you expect that it was a payroll for the  
 7 last half of April 2005?  
 8 A Yes.  
 9 (Plaintiff's Exhibit No. 18 was  
 10 marked for identification)  
 11 Q (By Mr. Deats) I have handed you a  
 12 document that's been labeled for identification  
 13 purposes as 18. It's labeled, at the top, "Payroll  
 14 YTD Reports."  
 15 If you know, does "YTD" stand for  
 16 year-to-date?  
 17 A I suspect.  
 18 Q Okay. Are -- are you familiar with  
 19 these particular payroll reports?  
 20 A No.  
 21 Q You have not seen these before?  
 22 A No.  
 23 Q I want to go back now and talk about  
 24 -- specifically about Target's involvement with  
 25 regards to the management of the people doing  
 0145  
 1 cleaning services for Jim's Maintenance.  
 2 We have already talked about the  
 3 contractor handbook.  
 4 Was Jim's Maintenance required to  
 5 follow the guidance set forth in the contractor's  
 6 handbook in performing cleaning services for Target?  
 7 A Yes.  
 8 Q Did Jim's have any ability or  
 9 authority to deviate from the practices specified in  
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the contractor's handbook if you thought another practice might be more effective?

A No.

Q We also talked about a scope-of-work document that was attached to the 2005 contract. Do you recall that document?

A Yes.

Q I believe it was Plaintiff's Exhibit 5. Did that document also control the manner in which Jim's was to provide cleaning services for Target?

A Yes.

Q Did Jim's Maintenance have any authority to deviate from the requirements of the scope-of-work?

A No.

Q In addition to those two documents, did Target, from time to time, put out special cleaning bulletins?

A Yes.

Q In what sorts of circumstances would Target put out special cleaning bulletins?

A Prior to Christmas, prior to Thanksgiving, prior to heavy back-to-school sales, prior to changing -- turnover -- changing their seasonals.

Q And when you had those special cleaning bulletins, did they indicate additional or different work that Jim's Maintenance was to perform?

A They would send out a document -- an example would be, prior to Christmas, you sit down with your crew leader and you sit down with the store team leader, the overnight person, who is in charge of stocking the store -- about -- there's usually about three or four Target managers, and you fill it out -- the Target people fill it out, what time they want you in the store, what time you're supposed to do certain areas of the store. You know what I mean? Like seasonals or you're supposed to do the pharmacy or you're supposed to do this, so that you could -- so they could know where you're at, what time you're going to have lunch, where you were going to have lunch, what area of the store you were supposed to be in, what time you're supposed to leave.

Q And, then, they would have a -- a seasonal -- like whenever they want us to strip the store after Christmas, they want us to start with this area, do this one, move on to this area, and move around the store. They would put a diagram. It's a two-page document.

Q Okay. So very specific requirements for how you were to conduct the cleaning services?

A Yes.

Q If you -- do you recall whether or not Target put on any training seminars for the various cleaning contractors, on how to conduct services?

A Well, we would go to Minneapolis, we went to Boston, Las Vegas, Orlando, to meet with Target Building Services, and they would give little seminars on best carpet cleaning methods, best vacuum methods, team building training, and then they had --

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restrooms today."

Q And, then, that would generate a work order, and that work order would come to me. I would get a work order that said, "work Order No. Blah, Blah, Blah. Store No. 771 called in at this time and said that nobody cleaned the restrooms."

Q Okay. And what, if anything, were you expected to do when you received that type of e-mail?

A We had to respond. I had to contact the store, find out what the issue was, try to reach that person. If I can't reach that person, then reach the store manager, find out what the situation is.

Q I have to get ahold of my district supervisor and they had to go to the store, walk it, write down what the solution is going to be to make sure that we pick up that restroom in the morning, make sure that we don't do this again, and then they would respond that back to me.

Q They would call me, I would type it up, send it to the store -- send it to Minneapolis and copy the store.

Q So your first contact, when you got one of those e-mails, was to talk to somebody -- a manager at Target?

A That was -- yes.

Q And, then, after you talked to a manager in Target, you were expected to get with your supervisor and your cleaning crew and start providing an action plan?

A An action, yes.

Q And that would go to both Target in Minneapolis, Building Services, and, also, to the store in question?

A Yes.

Q And, specifically, in the store in question, the store manager?

A You were to try to reach the person -- most of the time, it's the store manager or -- there's three key people in the store who handled it, usually.

Q And who were those three key people?

A The -- the manager on duty -- the team leader on duty, the overnight person who was in charge of logistics -- I think they're called an ETL -- and the store manager.

Q Okay. And did this procedure that you've outlined, with regards to the e-mails -- did this happen -- how often?

A Was it a regular occurrence, a very --

A Pretty regular occurrence.

Q -- occasional occurrence, or --

A I mean, you might get 20, 30 e-mails a day.

Q And, in each of those cases, you were required to get with the store manager, get with the --

A Local supervisor, have them visit the store, have them try to walk the store with the person who called it in, and put an action plan

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they hosted our regionals up to Target to go to a carpet cleaning seminar. They paid for them to go up there.

Q For your regional managers to go? For regional managers.

Q And when they put on these demonstrations, were these demonstrations for the purpose of instructing you on how you were to perform services under the contract?

A Yes.

Q And did they present -- did they have product presentations at these seminars?

A Yes.

Q And what was the purpose of the product presentations?

A Oh, they -- they would -- they had a humongous, indoor carpet cleaning machine that they wanted -- that they wanted to show everybody.

Q And when we're talking about how you would do things, you understand I'm talking about how Jim's Maintenance cleaning crews were to perform services; right?

A Yes.

Q And would you go back, then, and provide direction, through the supervisors, to your cleaning crews on how they were to conduct services?

A Yes.

Q How often did these training seminars occur?

A Once a year.

Q And we've already talked about the monthly housekeeping checklists that were used; correct?

A Yes.

Q And tell me what you know about that. When -- what impact, if any, did the use of the monthly checklists have on your cleaning operations?

A You were not supposed to get red three months in a row.

Q What happened if you got red three months in a row?

A They had the ability to terminate your contract.

Q Okay.

Q They always have the ability to terminate your contract.

Q When you would get a red, what, if any, steps would you need to take with regards to that store?

A They would ask that you go to the store and walk the store with the STL, find out specifically what the problem is, and come up with a solution on what you're going to do to meet brand and then e-mail it to them.

Q I had to respond -- every -- we got e-mails, so they -- to help communicate, they set up an e-mail system where the store -- anyone in the store -- any Target employee could call in to a 1-800 number and say, "Hey, the -- they're not doing this. They didn't do this today. They didn't clean the

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together.

Q And how often each day did that occur, on average?

A Well, the people who sent them in -- it's usually the overnight person. So he would send it in, you know, 6:00, 7:00 in the morning. Most of these came in before 9:00 a.m.

Q And did you normally get one a day, more than one a day, fewer than one a day?

A It varied, but, you know, probably 10 to 30, I would say.

Q Each day?

A A day, yes. Overnight. On heavy weekends -- Christmas would be heavier, you know.

Q Now, your cleaning crews at the Target stores were overnight cleaning crews; correct?

A Yes.

Q And when did the -- what was the start time for your cleaning crew?

A It was typically about 10:30.

Q When you say "it was typically about 10:30," who sat the start time?

A The store.

Q That was a decision made by the individual store?

A Yes.

Q And when you say "the store," do you mean the Target managers at the store or do you mean the Jim's Maintenance supervisor?

A No, the store team leader. The STL for Target. Some of them would want the person before 10:00. It depended on the store. You know, the store might be a small, low-volume store in Lubbock -- not Lubbock, in Midland, and they would want you there before 10:00, because that store already had all of their stuff picked up and their employees could leave.

Q So the faster that manager could get the Target people off the clock, the better. So he wanted his people there early.

Q High-volume stores, they wanted them there later. They wanted you to come in at 11:00 or midnight, you know, is when they wanted you in, because they knew they could keep you longer. You know, it was better for them to --

Q Okay.

Q -- for the person to come in later.

Q But, in each case, it was Target that would set the start time for your employees?

A Each individual store.

Q And did Jim's have any say-so in what the start time was going to be for an individual store?

A No.

Q How did Jim's cleaners get into the stores at night?

A They would knock and a key carrier would let them in.

Q And when you say "a key" --

MR. PIZZO: I'm sorry. I didn't

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2 hear that.  
 3 THE WITNESS: A key carrier would  
 4 let them in.  
 5 MR. PIZZO: Okay.  
 6 (By Mr. Deats) who were the key  
 7 carriers?  
 8 The store team -- the team leaders.  
 9 There -- I don't know. There might be four or five  
 10 people in each store.  
 11 Q Okay. And when you're talking about  
 12 the team leaders, are you, again, talking about  
 13 Target employees?  
 14 A Yes.  
 15 Q Did Jim's Maintenance employees or  
 16 supervisors have keys to any of the stores?  
 17 A No.  
 18 Q Did Jim's supervisors have any ability  
 19 to let employees into the store at night?  
 20 A No.  
 21 Q Were employees required to enter the  
 22 store at the same time or could they enter the store  
 23 at a different time?  
 24 A No. Altogether.  
 25 Q And had to be let in the store by a  
 0156 Target employee?  
 1 A Yes.  
 2 MR. PIZZO: Would this be a good  
 3 stopping point for a short break?  
 4 MR. DEATS: Sure.  
 5 (Short Break)  
 6 (By Mr. Deats) After the Jim's folks  
 7 were in the store, were they allowed to leave the  
 8 store before the end of their work period?  
 9 A No.  
 10 Q Do you know whether or not, in fact,  
 11 the Jim's people were locked into the store?  
 12 A They were always locked -- the store  
 13 was always locked at night.  
 14 Q Were Jim's cleaners allowed to leave  
 15 for any reason?  
 16 A No. I mean, unless there was a  
 17 medical emergency.  
 18 (Plaintiff's Exhibit No. 19 was  
 19 marked for identification)  
 20 Q (By Mr. Deats) I'm going to hand you  
 21 a document that's been labeled for identification  
 22 purposes as Deposition Exhibit 19.  
 23 Do you recognize this document?  
 24 A Yes.  
 25 0157 Q What is it?  
 1 A This is a Target morning checklist.  
 2 Q And this is a Target checklist that  
 3 was completed in Target Store 246 on August the 7th,  
 4 2004; correct?  
 5 A Yes.  
 6 MR. PIZZO: Could you identify  
 7 what store this is?  
 8 THE WITNESS: Yeah. I don't  
 9 know. I don't think we had a 246.  
 10 MR. PIZZO: Okay.  
 11 THE WITNESS: They might have  
 12 Page 65

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13 written down the wrong --  
 14 MR. DEATS: It could be 296.  
 15 MR. PIZZO: I'm just doing that  
 16 so we have a clean record as to what we're talking  
 17 about.  
 18 THE WITNESS: It -- it -- it  
 19 appears to say "246."  
 20 MR. DEATS: 1246?  
 21 MR. PIZZO: Do you want to go off  
 22 the record for a minute?  
 23 Q (By Mr. Deats) So you don't recognize  
 24 the store number?  
 25 A Not off the top of my head.  
 0158 Q But do you recall whether or not your  
 1 crews used this same type of document?  
 2 A Yes.  
 3 Q Now, when, typically, were these  
 4 morning checklists filled out?  
 5 A This was -- before we could leave, our  
 6 team would -- would put their names on and then they  
 7 would go to whoever would let them out of the store,  
 8 the key carrier, and -- and ask them to walk the  
 9 store with them, so that they could mark down the  
 10 things that they had checked off as being done or not  
 11 done, and then we would go back, work on it, and then  
 12 they would let us out.  
 13 Q Okay. Now, "they," you're talking  
 14 about a Target employee?  
 15 A A Target manager. No -- Target  
 16 employees couldn't let you out. It would have to be  
 17 -- only specific -- because they would have to maybe  
 18 take the alarm down, let you out, turn the alarm back  
 19 on.  
 20 Q So was this something that was done  
 21 every day, every other day? How often?  
 22 A This was given to us at one of these  
 23 Target meetings -- whenever we were given these books,  
 24 Target gave us this, and we used it -- some of the  
 0159 store managers didn't want to do it every day. They  
 1 just wanted you -- you know what I mean? To -- they  
 2 didn't want to mess with it. They didn't want to  
 3 take time out and, you know, walk all of these things  
 4 and do all of this stuff.  
 5 But any store that was having problems  
 6 -- if we were getting bad scores, if it was red, we  
 7 required this, and Target -- Target would require  
 8 it --  
 9 Q Okay.  
 10 A -- if they were having problems.  
 11 Q So a Target manager could decide not  
 12 to use it every day, but unless a Target manager made  
 13 that decision, was this document used every day?  
 14 A Yes.  
 15 Q And the walk-through that you've  
 16 described, was that done prior to the time that Jim's  
 17 cleaners could leave?  
 18 A Yes.  
 19 Q So this would have been done at the  
 20 end of the work period for the Jim's employees?  
 21 A Yes.  
 22 Q And if, for example, some of these  
 23 Page 66

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24 areas were not cleaned to the satisfaction of the  
 25 Target manager conducting the review, what would  
 0160 happen?  
 1 A They wouldn't let them out of the  
 2 store.  
 3 Q And would they require them to redo  
 4 work that had already been done?  
 5 A Yes.  
 6 Q Or maybe to do work that they had  
 7 neglected to do?  
 8 A Many times it was work that had  
 9 already been done. If they vacuumed an area and,  
 10 then, the unloading crew -- Target crew came in and  
 11 they were pulling stuff out of boxes, putting things  
 12 -- hanging things, a lot of debris, boxes, paper  
 13 plastic would be on the floor, which they're supposed  
 14 to pick up and move to their next area. So the store  
 15 manager would ask us to come around and clean up  
 16 again in that area, or maybe they would all take a  
 17 giant restroom break in the front restroom and --  
 18 Q when you say "they would all take a  
 19 giant restroom break," who is that?  
 20 A The Target stocking crew.  
 21 Q Okay.  
 22 Q And the Target -- they may go to the  
 23 restroom and -- right before the store was to open.  
 24 So just, you know, 25 people in there would dirty up  
 0161 the bathroom.  
 1 Then the key carrier -- the key  
 2 carrier would be responsible when the STL got there  
 3 that morning. So if we were gone and something  
 4 looked bad, the front mat or the restroom -- say he  
 5 walked right into the restroom and the restroom was  
 6 already -- it looked like a small Army had already  
 7 been in there and used the restroom that morning, he  
 8 would be upset with the key carrier for -- "why did  
 9 you let them out if they didn't do this before they  
 10 left?"  
 11 Q And what if this -- was this morning  
 12 checklist normally done at the end of the shift?  
 13 A This was before the shift -- when you  
 14 tried to leave. When you felt you were finished --  
 15 you had already accomplished everything, Jim's  
 16 Maintenance people, then they would go to the store  
 17 to walk this and to get out.  
 18 Q And were -- to your knowledge, were  
 19 the Jim's cleaners able to control when this morning  
 20 run-through was done?  
 21 A No.  
 22 Q Who made the decision about when the  
 23 morning run-through would occur?  
 24 A Whoever that Target key carrier was  
 0162 that morning, and it would be -- there would usually  
 1 be three people in that store who worked overnight  
 2 and were typically assigned to that.  
 3 Not anybody in the store could let you  
 4 out, only the key carrier. So you would have to go  
 5 find them, wherever they were, in the back or  
 6 wherever they were in the store, and have them to  
 7 walk this with you and let you out.  
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9 Q Now, what if an area was not cleaned  
 10 to their satisfaction, but you had already worked a  
 11 complete shift?  
 12 would that make a difference in  
 13 whether or not they would require you to stay?  
 14 A Yes.  
 15 Q How would it make a difference?  
 16 A They would tell them to go clean it  
 17 over again.  
 18 Even if that meant staying longer than  
 19 their normal shift?  
 20 A Yes.  
 21 Q Do you know how often that occurred?  
 22 A All the time.  
 23 Q Did you have any ability to keep the  
 24 Target key carriers who conducted these inspections  
 25 from holding over the Jim's employees?  
 0163 A No. Harlin Murray, the regional for  
 1 the south area -- his mantra was, "Well, if you  
 2 called" -- if a store manager called them and said,  
 3 "Hey, our front mats look terrible. They didn't even  
 4 touch our restrooms last night," and Harlin would  
 5 say, "well, why did you let them out?"  
 6 Q And did Harlin give the Target  
 7 managers any instructions, that you're aware of --  
 8 A "do not let them out."  
 9 Q -- with regards to letting the Jim's  
 10 employees go?  
 11 "Do not let them out until the job is  
 12 done. They are paid to do the job, and if they  
 13 didn't do the job, don't let them out until it's  
 14 done."  
 15 Q No matter how long it takes?  
 16 A Yes. He knows that the contract does  
 17 not say a time period, that -- that they are to be in  
 18 there until the job is done.  
 19 Q Okay. And I notice that, in the lower  
 20 right-hand corner of the document, there is a space  
 21 for a signature by the crew foreman; correct?  
 22 A Yes.  
 23 Q And that would have been a Jim's  
 24 Maintenance cleaner?  
 0164 A Yes.  
 1 Q With each store, did you have a crew  
 2 foreman?  
 3 A You had a -- yes, a team leader.  
 4 whoever -- out of the four or five people, there  
 5 would be one that was the team leader.  
 6 Q So that person was more like a work  
 7 leader, as opposed to, say, a supervisor?  
 8 A Yes.  
 9 Q And, then, there is also a signature  
 10 blank for -- it looks like it's "Target LOP"?  
 11 A Leader on duty.  
 12 Q And was it your understanding that  
 13 this document needed to be signed by the Jim's and  
 14 the Target representatives before employees could be  
 15 released?  
 16 A Well -- I mean, just almost 90 percent  
 17 of them looked just like this. You had -- our people  
 18 -- their job was to get the LOP's signature. It  
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20 didn't really matter.

21 As long as their names were filled in

22 and what time they got in and out, then they just

23 needed -- the key to this all being complete is

24 getting the Target LOD's signature. So --

25 Q Okay.

0165 A I mean, if you looked at 100 of them

2 or 1,000 of them, very few would have the crew's, you

3 know, foreman's name.

4 As long as they put their names over

5 here, they're covered. This was for -- the Target

6 LOD was the important --

7 Q Then, in the lower left-hand side, I

8 notice that there is a grid marked "cleaning crew

9 sign-in/out log."

10 Do you see that?

11 A Yes.

12 Q And you see that there are three

13 employees' names written in and, then, a time in and

14 a time out completed?

15 A Yes.

16 Q Now, do you know whether or not this

17 time log was routinely completed on these morning

18 checklists?

19 A Routinely. Now, this -- this one --

20 it appears -- it appears, to me, they got it

21 backwards, that they really came in at 10:30 and they

22 really left at 6:30 --

23 Q Okay.

24 A -- if I were to look at the document

25 and try to ascertain what happened.

0166 Q Now, did Jim's Maintenance routinely

2 receive these completed morning checklists?

3 A No. We would -- we had them all

4 three-hole punched and they would leave them in their

5 logbook at the Target store.

6 Sometimes they were faxed in. If

7 there was a problem -- if we had had two reds in a

8 row, we would say, "Okay. Fax that in. We want it

9 faxed in," but, typically, we would have our

10 supervisors go pick them up, you know, after they got

11 real thick.

12 Most of them were kept in the store.

13 only problem stores --

14 Q Do you know whether or not the morning

15 checklists were -- were maintained by Target? Did

16 they --

17 A They may have looked through --

18 Q -- receive copies --

19 A No. No. They may have looked through

20 the logbook, but, as far as I know, they did not keep

21 it.

22 Q Did you utilize this cleaning crew

23 sign-in/sign-out log for purposes of your own record

24 keeping about the hours that the employees worked?

25 A No.

0167 Q Was it -- do you know whether it was a

2 Jim's Maintenance idea that the employees would

3 record the names and the times that they worked?

4 A We -- this was just -- this is the --

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16 A No.

17 Q Why not?

18 A All we could do -- I could -- I could

19 -- they would complain to me that -- our people would

20 complain to their supervisor.

21 The supervisor would call me, "Hey,

22 you know, 771 has kept them late three days in a row,

23 and our guys have another part-time job that they

24 have got to get to across town, and this isn't

25 working. You're going to have to stop or they're

0170 going to quit."

2 And I would contact Minneapolis, "Hey,

3 they're keeping them a little bit late," and they

4 would have me go down, find out what -- "What's the

5 problem? There must be a problem if they are not

6 getting done on time. Get it fixed."

7 That would be about it.

8 Q Okay. But you didn't have --

9 A As far as I know of, there has never

10 been an action from Minneapolis -- an e-mail or a

11 "Hey, don't keep them over" -- you know, keep them

12 late.

13 Q Okay. Did you have any ability or any

14 authority to override a Target manager who wanted to

15 keep employees after the normal quitting time?

16 A No.

17 Q Did you have any authority to tell

18 Target managers, "You can't keep my employees, say,

19 after 6:30?"

20 A No.

21 Q Did you have any ability to let

22 employees out the -- out of the store at the end of

23 the shift if the Target manager would not release

24 them?

25 A No. The problem is you have the store

0171 manager and then you have underlings, LODs, below

2 them.

3 The LODs are the ones letting them

4 out. So the LOD -- it's a reflection on that young

5 LOD of what that store looks like when the STL gets

6 there.

7 Q Okay.

8 So they have nothing -- it doesn't

9 bother them at all to keep them until 9:00 or 10:00

10 or have them buff the front again or redo the

11 bathrooms before you leave.

12 It's not -- it wasn't a good situation

13 on them letting people out. They had no incentives

14 to let them out on time.

15 Their incentive, actually, was to make

16 sure that that store looked fantastic when the door

17 opened, when the STL came in, that would -- it would

18 be a good reflection upon them. They were in charge.

19 Q Okay. So that the record will be

20 clear, when you say "STL," you're talking about the

21 store team leader?

22 A That is the manager of that specific

23 store.

24 Q Okay. That's the overall manager for

25 that Target store?

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5 the exact document, as it was given to us.

6 Q Who created this document?

7 A You know, I don't know.

8 Q Do you know whether or not Target

9 created the document?

10 A I don't know. It -- I don't know who

11 -- Target gave it to us, but it was pretty ugly. You

12 know, it's not a very nice-looking -- it doesn't say

13 "Target," dot, dot, dot, anything on it, so I --

14 Q Do you recall whether or not you

15 utilized this morning checklist throughout the time

16 that you did work for Target?

17 A No. We didn't forever. Whenever we

18 were at a meeting -- I remember being handed the

19 document. You know, they made copies and gave them

20 to all 25 contractors.

21 At a meeting, they gave us this to

22 help us, because -- the big thing that they were

23 excited about was it's in Spanish and English. So

24 they gave it to everyone, handed them out.

25 MR. PIZZO: I think we can

0168 stipulate that there's a copy -- I remember seeing

2 one in the contractor's handbook someplace

3 MR. DEATS: We're looking for one

4 and --

5 MR. PIZZO: Okay.

6 MR. DEATS: -- hopefully, we'll

7 find it in a second.

8 Q (By Mr. Deats) I'm handing you a copy

9 of Plaintiff's Exhibit 3, which is the contractor

10 handbook.

11 A Uh-huh.

12 Q And you will see that there is a

13 Target store morning checklist in the book, do you

14 not?

15 A Yes.

16 Q Does this refresh your memory as to

17 whether or not this was a document --

18 A Yes.

19 Q -- provided by Target?

20 A It was provided to me from Target. I

21 mean, I -- I'm certain that I was given it by Target.

22 Q Okay. By the way, there's also a copy

23 in the contractor handbook of the monthly checklist,

24 is there not?

25 A This was in Spanish. Yes. They gave

0169 us copies of that in English and in Spanish.

2 Q Okay. Now, did the use of the morning

3 checklists ever result in employees being held over

4 after a scheduled quit time?

5 A Yes.

6 Q And did that happen frequently,

7 infrequently, on what type of basis?

8 A Frequently.

9 Q And did that result in Jim's

10 Maintenance cleaners working more than the scheduled

11 number of hours?

12 A Yes.

13 Q Did you feel like Jim's Maintenance

14 had any control over the number of hours that

15 employees worked?

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1 A Yes.

2 Q And, then, the LOD would be a manager

3 during a specific period of time?

4 A The leader on duty at that time.

5 There was always an LOD at all times.

6 Q And even for the overnight cleaning

7 crew, there was an LOD?

8 A Yes.

9 Q So there was always a Target manager

10 in the store while the cleaning crew worked?

11 A No, not in small stores that did not

12 -- some stores -- rural stores or small-volume

13 stores, not Super Targets, they would actually lock

14 the doors. They would leave at 10:00 and our people

15 would be in there until the store opened, and then

16 they would come and let them out.

17 Q Okay.

18 So it wasn't -- it's not all the same.

19 In some Super Targets, there is a

20 person there 24 hours.

21 Q Did the time that a Target LOD left

22 and the next Target LOD came on duty -- did that ever

23 affect when Jim's cleaners could leave the store?

24 A I don't know how that would affect --

25 Q Well, let's say that one LOD leave --

0173 lets them in at 10:00 and leaves and, then, the

2 next --

3 THE VIDEOGRAPHER: Excuse me.

4 we've got a phone going again.

5 (Short Break)

6 (Reporter read back previous

7 question)

8 Q (By Mr. Deats) Were there situations

9 in which the time that the LO -- the next LOD came on

10 duty affect when Jim's cleaners were able to leave?

11 A I don't believe so. I don't see how

12 an LOD leaving at 10:00 at night affected the LOD

13 that came in at 6:00 in the morning, if that makes --

14 Q Okay. Well, did sometimes LOD not

15 come in at 6:00 morning, but, instead, came in at

16 8:00 in the morning?

17 A Yes.

18 Q And, in those situations, where you

19 had, say, a 10-hour gap there, might that affect when

20 the employees --

21 A Yes.

22 -- when Jim's cleaners would be able

23 to leave?

24 A Yes.

25 Q Simply because there was nobody to let

0174 them out of the store --

2 A That's correct. Yes.

3 -- to run the morning checklist?

4 A Yes.

5 Q Now, do you know whether or not Target

6 managers directed the work of Jim's cleaners while

7 they were doing their work?

8 A Yes.

9 Q Okay. Did that occur on a frequent or

10 infrequent basis?

11 A Sometimes.

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Q Okay. Now, you mentioned that Target sometimes had stockers stocking while the cleaning crew was doing its work, correct?

A Yes.

MR. PIZZO: Stalk -- what was that?

MR. DEATS: Stockers.

MR. PIZZO: What were they doing?

MR. DEATS: Stocking the shelves.

MR. PIZZO: Okay.

MR. BEARDALL: S-t-o-c-k-e-r.

MR. PIZZO: I thought there was an "A" in there somewhere.

Q (By Mr. Deats) Now, did the -- were the stockers, if you know -- were those Target employees?

A Yes.

Q And they did their stocking primarily at night?

A Yes.

Q Did the stocking, on occasion, interfere with or affect the cleaning services that were being provided by the Jim's people?

A Yes.

Q In what sorts of situations did they affect it?

A Where -- what areas they were working in, if they left a mess behind them, if -- if they were -- if they were using the restroom in the employee restroom or if they were using the restroom in the customer restroom, we would have to reclean that.

Q If they took their break, if they all had lunch or a break -- you know, a morning breakfast type thing in the food court, we would have to clean that over again, filling up trash cans.

Q Just generally, people dirtying things up behind them.

Q So did -- were there occasions, then, in which stockers restocked particular areas of the store after they had been cleaned by the cleaning crew?

A Yes.

Q And that sometimes required the cleaning crew to redo that area?

A Yes.

Q Which, in turn, affected the hours that they spent cleaning the area?

A Yes. Absolutely.

Q Now, did Jim's maintain an on-site supervisor for each of the stores that it cleaned?

A No.

Q So, in an all situation, was there a supervisor to direct the work of the Jim's cleaners?

A No.

Q Now, is -- the work that's being performed on the cleaners, that is, for lack of a better word, unskilled, labor-type work, is it not?

A Some of it, yeah. The -- the handling of chemicals and wax and stuff, the -- the person in charge of that is -- you just can't be anybody.

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sign-in log.

Q Do you recognize this document?

A Yes.

Q Is this a document that was created by Jim's Maintenance?

A No.

Q Is this a document that Jim's Maintenance used in determining its payroll?

A No.

Q Is this a document that Jim's used to determine which days and hours its employees worked?

A No.

Q Were Jim's Maintenance cleaning crews required to maintain these sign-in logs?

A Yes. Target requires this.

Q Okay. Did Target create this document?

A Yes.

Q And do you know what use was made of this document?

A No.

Q Was this document ever sent to you -- to Jim's Maintenance on a routine basis?

A It was never sent.

Q Where were these overnight cleaning crews sign-in log maintained within the stores, if you know?

A They had a book -- a notebook similar to that white one right there --

Q Okay.

Q -- and it had these types of forms at the front, and you would sign in -- there was a lot of copies. You would sign in, and it was kept -- when you walked in, usually the first counter beside you, it was kept in a drawer right there.

Q And do you know what use Target made of the documents?

A No.

Q Did anybody at Target explain to you why they required the overnight cleaning crew to utilize this sign-in log?

A They wanted a copy of who was in the building and who -- at all times, and what time they were in and out.

Q Okay. And were these notebooks that you're talking about -- were they maintained in the customer service area?

A Sometimes. Not generally. Generally they were in a -- in a drawer.

Q Do you know whether or not they were sometimes maintained in the manager's office?

A No. I don't think so.

Q Customer service -- Super Targets, when you come in, they had a counter -- a receptionist at the Super Targets, and it was kept at that -- at that counter, on the entrance and exit.

Q And I may have asked you this, but did Target indicate to you why they wanted this --

A They wanted to know who was in the store at all times and what time they came in and came out.

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Q Okay. But, in general, did Jim's provide any type of training to cleaners before it hired them and placed them in the stores, or was it on-the-job training, or what?

A Mostly on-the-job.

Q If a Target manager asked the cleaning crew to reclean an area, say, because the stockers had come in after them, did Jim's have any ability to charge extra for having to clean a second time?

A No.

Q Did Jim's have any ability to charge extra because additional hours of work would be required?

A No.

Q Did Jim's have any ability to refuse to redo work?

A No.

Q Are you aware of situations in which Target managers asked Jim's employees to do work that was outside the cleaning type work that they were hired to do?

A I can't think of anything.

Q Okay. You're not aware of a situation?

A Not aware of one.

Q How many hours did you anticipate that employees would need to work in a day to perform cleaning services?

A Eight.

Q As a practical matter, were the employees generally able to do their jobs and be released by the Target managers within eight hours?

A Yes. You could -- the job could be done, yes.

Q Do you know whether or not, at some of the San Antonio and Austin stores, employees were routinely being held over more than eight hours in a day?

A Yes.

Q Is that "yes," they were being held over?

A Yes, they were being held over.

Q Did -- and you were aware of that situation, were you not?

A Yes.

Q Did you feel like you had any ability to affect that situation?

A No.

Q The best you could do is call Minneapolis and complain?

A Yes.

Q And did that seem to have any effect on the number of hours that your employees were required to work?

A No.

(Plaintiff's Exhibit No. 20 was marked for identification)

Q (By Mr. Deats) I'm handing you a document that's been labeled Plaintiff's Exhibit 20. It purports to be a Target overnight cleaning crew

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Q Okay. And was this supposed to be something that was -- accurately reflected the time in and the time out for the employees?

A They said that they -- well, I mean, it -- you don't know what's official. There was no official report of what this was for, but they told me that it was so -- you know, if there was a fire, if there was an emergency, they had to know who was in the store, what time they came in, if they were still in there, or what time they left but this had to be accurate -- they really beat it into our heads this has to be done.

Q You're not going to find a Target across the country that does not have this. They want to know who's in there, what time they got in there.

Q If the fire department needed to know who was in the store, Target would be able to tell them exactly who was in the store.

Q Now, looking at Page 2 of Deposition Exhibit 20, you can see that it looks like someone with the same handwriting has filled in all the names and the times of entry and the times of leaving; correct?

A Yes.

Q Okay. Was this a document, to your knowledge, where the employees were individually required to sign in, or was someone just required to notate their names and times of -- times in and times out?

A The rule is, individually, they were supposed to sign in and sign out.

Q But, as a practical matter, perhaps that didn't always occur?

A That's -- yes. If one of them -- whoever -- usually the low man on the totem pole and if he had good handwriting -- whoever had good handwriting, they would have sign it.

Q But we got a lot of calls -- Target would get upset about that. They would call and say, "Jose signed everybody in again today."

Q Okay, and I would tell the supervisor to go over there and make sure that they're all individually signing in.

Q So you actually got feedback from Target when your -- when your folks were not appropriately keeping the sign-in logs?

A Yes.

Q They would contact me and say, "They wrote down that they got here at 10:30. They didn't really get here at 10:30. They got here at 10:45."

Q Were you aware of situations in which employees recorded a time out that was earlier than the time they were actually allowed to leave?

A No. I don't remember anybody doing that.

Q Now, were your employees generally allowed any type of a meal break during the day?

A Yes.

Q And what was your understanding of the

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length of the meal break that was provided to your crews?

A We trained for 15 -- two 15-minute breaks and a 30-minute lunch or dinner.

Q Were the 15-minute breaks considered on-the-clock breaks?

A No.

Q Okay. Now, do you know whether or not the employees were always able to take those breaks?

A No. Whenever they got into the store and they were directed by the Target team on what time they were to take those breaks, where they were to take them, because they kind of coordinated it, where their people would be, what time their people would take their breaks, what time our people would take our breaks, where --

Q Okay.

Q How long you would take.

Q So Target managers, then, actually directed your people as to the time and locations where they were to take breaks?

A Yes.

Q And that happened -- and that was a decision that was made by the Target managers?

A LOO.

Q Did you have any control over when and how breaks and lunch --

A No.

Q -- were to be taken?

MR. PIZZO: I'm sorry. His last answer, did you get a -- I think it was LOO.

THE REPORTER: I did -- I got it.

MR. PIZZO: Okay. I'm sorry. I didn't mean to interrupt, Counsel.

Q (By Mr. Deats) Let's talk about hiring and firing of Jim's employees. Did Target have any control over who Jim's hired to work as the cleaning crew?

A They would provide us with input, the store manager.

Q What type of input would the store manager provide about hiring decisions?

A They would observe them and then tell us, "Hey, this guy is not working out. You could just tell by the way he walks in the door he's not coming to work. The last guy we had, boy, he came to work like he was on fire, but this guy, you can just tell he's not into it." and, then, "Look at the way the tile looks." Just a bunch of feedback, personnel feedback.

Q "We don't like this guy. We want this guy gone. We want a whole new crew. We want our old crew."

Q So, perhaps, you made the initial hiring decision, but you would hear from the Target managers quickly thereafter if they felt an employee was not working out?

A Their feedback on how they were working out.

Q And did the Target people have any authority with regards to your decision to hire

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0189 theft."

Q So even though you objected and felt like there must be some sort of misunderstanding, you were not allowed to keep that employee?

A Yes.

Q And that employee was not allowed to work in any Target store?

A Yes.

Q And, as a practical matter, did you have any positions available that didn't involve working in Target stores at that point in time?

A We had Mervyn's, but I don't think we had any openings.

Q Okay. So, as a result of that, you were required to fire the employee?

A Yes.

Q How often, on average, would you say that Target would require you to fire an employee?

A I don't know. They -- I mean, if a crew was not performing, the store looked bad, they would -- adamant, they wanted a different crew in there.

Q Were there ever situations in which you were required to fire an entire crew?

A Yes.

Q Did that happen -- do you recall any specific instances in which you were required to fire an entire crew, any stores or --

A I don't have one off the top of my head, no.

Q And the reason -- what would be the reason that they might require you to fire an employee crew?

A Performance, that the store did not look very good.

Q And would that be -- include the crew leader in those cases?

A Yes.

Q Now, when they told you to fire an employee -- and by "they," I mean the Target managers -- did they ever give you instructions about whether you could move them to a different Target location?

A No.

Q Okay. Do you -- you mentioned a minute ago that -- that you were told that Maria couldn't work in any Target store; correct?

A Yes.

Q Did that ever happen with regards to other Jim's folks that you were required to let go?

A Yes. We moved crews sometimes. You might move somebody -- I remember we moved somebody from 1204 to another store, and 1204 was upset, "We want our crew back. We don't like these guys. We want our guys back."

Q Now, you indicated that one reason you might be required to fire an employee was because they were looking at somebody funny.

Q Can you remember other types of situations in which Target managers would ask you to fire employees?

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people -- excuse me, with your decision to fire people?

A They could call us and ask us to -- that they didn't want anybody -- a person in the store any more.

Q Okay. Now, is that how they would put it to you, that, "We don't want this person in our store any more?"

A Yes.

Q Did Target ever require you to fire employees?

0187 A Yes.

Q In what circumstances would Target managers require you to fire employees?

A Oh, if they felt that -- if one of their female employees were nervous that somebody was looking at them and he had been watching them when he was vacuuming and they felt uncomfortable around him, they wouldn't want him back in the store.

Q I had a girl that was fired in San Antonio for -- that we had to fire for eating a hamburger. It was her birthday, and the Target food court lady made her a hamburger and gave it to her, and the STL fired the person who made the hamburger and then called us and told us that we had to let our girl go.

Q Okay. So it was -- did you know this particular employee -- or, excuse me --

A Kind of, sort of, yeah. Marie, I think, was her name.

Q Her name was Marie?

A Yes.

Q And it was her birthday?

A Yes.

Q And had she asked the food court employee to make her a hamburger?

0188 A No.

Q The employee just chose to do that and gave her the hamburger?

A Yes.

Q And you're saying that the Target manager fired the Target employee?

A Yes.

Q And then called you and required you to fire Maria?

A And Maria was not allowed to work in any Target stores again.

Q Did you object, or anything like that --

A I heard --

Q -- when you got this instruction?

A Yes. I heard that and thought, "That sounds ridiculous," because Maria had been there a long time. She was a -- a daytime person. So she worked with a lot -- went in and out with all the Target people.

Q So I called Margaret and said, "Hey, is there anything we can do? This sounds like a misunderstanding," and she was adamant, you know, "what part of 'no' do you not understand? She is not allowed in a Target store ever again. She -- that is

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11 A No, I can't.

12 Q What about theft, as an example? Did Target have policies regarding employee theft?

13 A Yes.

14 Q And what sort of policy did Target have, if you recall, about employee theft?

15 A They would call us and tell us that our crew is stealing and we need to get rid of them, they're not allowed in the store any more.

16 Q Would they require you to fire employees in situations where they only thought they might be stealing?

17 A Yes.

18 Q Were you allowed to argue those decisions with the Target managers or --

0192 A No.

1 Q Now, when you say you would get these calls did you get them from individual store managers or did you get them from Minneapolis?

2 A No. From store managers.

3 Q So store managers had authority over firing decisions with regard to Jim's cleaning crews?

4 A Yes.

5 Q We've talked a little bit about this. I know that you had a chemical budget for each store, did you not?

6 A Yes.

7 Q Now, with regards to the cleaning equipment that you used, you indicated that, when you got a new store, you were required to provide new equipment?

8 A We were expected to.

9 Q And you obtained that equipment by leasing equipment?

10 A Lease purchase.

11 Q So you lease it and, at the end of a lease period, you have the option to pay?

12 A Pay a dollar and you own it.

13 Q Okay. So they're really sort of purchased on credit plans, then?

0193 A Yes.

1 Q And do you know whether or not Jim's had to borrow money in order to make those lease purchases of equipment?

2 A I would suspect that.

3 Q But you don't know?

4 A But I don't know.

5 Q Now, did Target specify a company that you were to lease this equipment from?

6 A No. They recommended Tenant scrubbers and Tenant cleaning equipment.

7 Q As a practical matter, did you do all of your leasing from Tenant?

8 A Most of it. Almost -- well, 99 percent of it.

9 Q Did Target specify the brands of cleaning equipment you were to use?

10 A They -- yes, which scrubber they wanted, a 5680 -- Tenant 5680 --

11 Q Okay.

12 A -- which is \$6,000. That's the

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majority of --

Q Okay. And I guess you had machines that you used for waxing --

A Buffers.

Q -- and machines that you used for stripping?

A Yes.

Q Okay. And did they specify the type of equipment you were to use in those cases, too?

A No. They might have recommendations, but Tenant was for the scrubber, for the carpet extractor, and the carpet cleaning equipment.

Q Okay. Is Tenant the brand of the machine or simply the company that provides the equipment or both?

A It's the manufacturer --

Q Okay.

A -- and the brand name.

Q What about the products -- the disposable products that you used in the Target score -- stores? For example, toilet paper, paper towels, soap that comes from soap dispensers.

A Who provided those supplies?

A Target.

Q Did -- were you required to use Target brand products for those kinds of things?

A Target ordered and supplied all of that.

Q And when you say "Target ordered and supplied," how did Target go about ordering and supplying those types of paper products?

A The products that you said, we did not control. They took care of.

Q Target -- one of their employees was in charge -- some of them would order six months' worth of product, some of them would order one month worth of product.

A We didn't have anything to do with the disposable products.

Q Your only job was to make sure that the products, once delivered to the store, were re-supplied?

A Yes. And we would notify them. We might leave a note on somebody's desk, "Hey, we're getting low on toilet paper. Hey, we're getting low on brown paper towels."

Q Did these paper products -- were they actually Target brand products that you used.

A I do not know. I -- I don't know.

Q Okay. Do you know whether or not, for example, you might pull toilet paper off the shelves if you were running low?

A That would be an extreme, extreme, rare case, but, happens, yes. We would not go without a customer having toilet paper.

Q And did you ever see the bills for these products?

A Not for the products that you're talking about.

Q Okay. And did they count against your

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A These -- this was when Target was handling the distribution. All of the supplies were coming through Target's distribution, on a Target truck, at this time, in '01.

Q Okay.

A So Target -- yeah. They gave us a list of all the things that we could order, and this is not all of it.

Q There was a much larger list. I condensed it down to just the products that Jim's Maintenance would use.

A Our people didn't need to see three pages of --

Q So this was a list that you created from a larger list that was supplied to you by Target?

A The reason it's a larger list is because of the pad size. You see scrubber size, pad size. That goes on and on for different size machines.

Q I'm showing you a document -- and I don't think we need to mark it as an exhibit, because it's a document that comes from the contractor handbook.

A I'll hand it to you. Do you recognize this multi-page document?

A Yes.

Q And what's its --

MR. PIZZO: Can we least --

Q (By Mr. Deats) And what's it --

MR. PIZZO: Why don't we at least identify it?

MR. DEATS: I'm going to.

Q (By Mr. Deats) What's its title?

A It's a "Target Housekeeping Supplies Order Form."

Q And let's hold it up and let the camera focus on it.

A (Complies)

Q And is this the larger form that you were talking about a moment ago, that you extracted the housecleaning supplies from, understanding that --

A Pretty much. Pretty much. This is actually an Xpedx part number. Right after this, they switched over to using Xpedx to distribute all of these products.

Q Uh-huh.

A So Xpedx -- Target was handling too much stuff, I guess. They didn't like sending it through their trucks, so they shipped -- they let these guys start handling it.

Q Okay.

MR. PIZZO: Are there Bates stamp numbers on those pages?

MR. DEATS: There are not Bates stamp numbers on these pages. We provided these to the defendant in discovery. It was a copy of the contractor --

MR. PIZZO: Right.

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chemical budget in any way?

A Not the products you're talking about.

Q Now, of course, there were some other cleaning products. Wax, for example, and things of that nature. Windex, I guess, or some type of glass cleaner.

A Who --

A Hundreds of products.

Q Yeah.

A Who was responsible for ordering the non-paper products?

A I was.

Q Okay. And did those products count against your chemical budget?

A Yes.

Q And who did you order those products from?

A In the beginning, it was Target, and then Target turned it over to a company called Xpedx, that distributes as a giant distribution facility. So you would turn it in to them.

Q Okay. You would turn in your supply orders to them?

A Yes.

Q And were all of the products that you used, the wax, et cetera -- were they actually Xpedx products, or was Xpedx simply the delivery service?

A I believe them to be the delivery service.

Q Okay. And did Target place any controls over the types of these cleaning supplies that you were to use?

A Yes. They provided you a list of items, with a code, that you could order only those -- Target-approved stuff.

Q Okay. So, for example, if you wanted to use Windex, as opposed to some other type of glass cleaner, did you have that option?

A No.

Q So Target actually controlled the types of products that you were to use?

A All of the products.

(Plaintiff's Exhibit No. 21 was marked for identification)

Q (By Mr. Deats) I'm handing you a document that's been labeled as Deposition Exhibit 21.

Q Do you recognize this document?

A Yes.

Q What is this document?

A This is a document that I put together a long time ago. This is an old one. '03, is that what this says? No, that's not '03.

Q I think this was '01, when this was made. Yeah.

Q This says '03. Target lists "3," but this is just -- that was just the third time I put it together, updated it.

Q Now, where did you get these products and these numbers that are listed for each of these products?

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MR. DEATS: -- handbook that you provided.

MR. PIZZO: Let's identify at least what -- what tab section it's in.

MR. DEATS: It's the first tab after the "supply order process" tab.

MR. PIZZO: That's all I need to know.

Q (By Mr. Deats) And it consists of four pages labeled Pages 6 through 9, and this specifically indicates the brands that are to be used, does it not?

A Yes.

Q And they actually have Xpedx's order numbers?

A Yes.

Q So you ordered supplies directly from Xpedx?

A Yes, I did.

Q And, then, they would be delivered to the individual Target stores on Xpedx trucks?

A Yes.

Q And did you receive the bill for these shipments?

A No.

Q Well, what happened -- how did Xpedx get paid for making these deliveries?

A Xpedx charged Target, I guess.

Q So, to your understanding, Xpedx billed Target directly for delivery of these supplies?

A Yes.

Q And, then, on the monthly reports that you got, it was -- there was an indication of how much of your chemical budget you had actually used?

A Yes.

Q So Target made periodic reports to you on how you were doing vis-a-vis your budgeted amount?

A Yes.

Q And you had no authority to deviate from the types of products that they required you to use?

A No.

Q If you failed to use all of the money allotted to you in your budget, were you able to pocket or keep that money?

A No. It meant nothing to us.

Q What happened if you went over your budgeted amount?

A They told us that they had the authority to charge us if we went over.

Q And to subtract it from the amount that they otherwise owed you under the contract?

A Yes.

Q And did you have any authority over the amount of your chemical budget?

A No.

Q What if you felt that you could save money, vis-a-vis through your chemical budget, by using cheaper brands? Were you allowed to do that?

A No.

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Q What if you felt like you could use a cheaper supplier, other than Xpedx, and save money in that manner? Were you allowed to consider doing that?

A No.

MR. DEATS: Let's go off the record. Could we take a short break?

(Short Break)

(Plaintiff's Exhibit No. 22 was marked for identification)

Q (By Mr. Deats) Mr. Smith, I have placed in front of you a document marked for identification as Plaintiff's Exhibit 22. It's a copy, that was made during the break, of the Target housekeeping supplies order form that I was asking you questions about.

Do you recognize it as such?

A Yes.

Q And it is, approximately, a four-page document that appears in the contractor handbook; correct?

A Yes.

Q After the tab marked "supply order process?"

A Yes.

Q Okay. Now, at the start of the deposition, you were talking about some Service Merchandise stores that Jim's was providing cleaning services for.

Was that the same sort of setup, overnight cleaning crews, or was that different?

A No. It was a morning service.

Q And like -- approximately, how many hours a day did your cleaning crews work in the Service Merchandise stores?

A I'm not sure. It was just a few hours, a couple of hours.

Q And you had, approximately, how many stores that you provided cleaning services for?

A I do not know.

Q Would it have been 10, less than 10?

A No. More than that.

Q You talked, also, about some stores that you said were sort of losers, in terms of whether or not you were able to make a profit, and you were talking specifically about West Texas stores.

Do you recall whether or not there was a Target store in Midland that you provided services for?

A Yes.

Q Did you consider the Midland store to be one of those that was difficult to show a profit on?

A Absolutely.

Q Did you have any sort of established workweek for periods -- for purposes of the Fair Labor Standards Act, the federal law that governs minimum wage and overtime?

For -- for example, did your workweek start on Sunday and end on Saturday? Did you ever

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to borrow money to finance?

A Yes.

Q Do you have an opinion about whether or not Target was aware that you would be unable to meet your final payroll without receiving that final payment from Target?

A I would suspect they -- I would suspect that.

Q Okay. You would suspect that they knew you would not be able to meet payroll?

A I don't know. It seems just mathematically, that you wouldn't be able to do that. I don't know.

Yeah, I would -- yes, they probably knew.

Q Now, your cleaning crews that worked in Target stores, did they pretty much perform the same tasks every day, day in and day out?

A Pretty much.

Q They pretty much cleaned Target stores according to the framework that Target established in the contractor's handbook and these other things we've have talked about; right?

A Yes.

Q And that really didn't vary from day to day or from week to week, did it?

A Not much.

Q Okay. There were some variations, for example, during holiday periods, things like that?

A Yes. During strip-outs, during major things. Say you spent 80 percent of your time doing the same thing, vacuuming, emptying the trash, wipe down the bathrooms, and then 20 percent of your time might be doing something -- a project.

Q Okay. And those projects were usually at the direction of Target, were they not?

A (No verbal response)

Q Holiday schedules --

A Yes.

Q -- back-to-school schedules?

A I mean, they -- it's in the book --

yeah, it's in the contractor handbook.

Q Okay. And the type of work that your cleaning crews were doing really didn't require much supervision, did it?

A I mean, once they learned the work, they pretty much did the same jobs over and over again?

A What, now?

Q Once they learned the work, what was expected of them, they pretty much did the same work over and over again, didn't they?

A Yes, kind of. But they're working in a store, underneath Target's LOB. You know what I mean?

To work around -- it's different every night, kind of, on where they were going to be, what they were going to be doing, what the -- the stocking crew, what they would be doing.

So it wasn't the same every night.

Q And it was different because of

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establish a specific workweek?

A No.

Q So you didn't really have an official workweek; correct?

A Seven days a week.

Q Okay. Now, almost all of your income -- with the exception of this one little cleaning contract you had at that vocational school, all of your income came from Target, did it not?

A After Service Merchandise shut down, which might have been 2000, 2001.

Q And, approximately, what percentage would you say of your total budget was devoted to paying the salaries of your workers?

A I would say, out of our budget, probably 70 percent.

Q And that 70 percent, would that include the salaries you paid to your managerial staff?

A That would include all of the cleaning -- cleaners --

A Okay.

Q -- and this -- and the supervisors would probably be included in that, most of them.

Not the regional people, and probably -- it would go up from there if you added everybody in.

Q And, then, the remaining percentage of your budget would be devoted to payment for equipment, payment for products, payment for other types of overhead?

A Insurance, vehicles, gas, all the supervisor expenses.

Q Okay. Was there any way that you would be able to meet payroll in a given month if you failed to receive the payments from Target?

A No.

Q Do you feel like Target was aware of your ability to meet payroll without receiving those payments from Target?

MR. PIZZO: Object to the form.

MS. MILLER: Object to the form.

Q (By Mr. Deats) In your opinion, based on your knowledge of the relationship with Target, do you have an opinion about whether or not Target was aware that you -- of your ability to meet payroll without receiving payments from them?

MS. MILLER: Object to the form.

Q (By Mr. Deats) Go ahead and answer.

A I -- I -- I know that, when we took over the contract -- when we started working for Target, it was -- I mean, they paid that month, because they knew -- and they -- they would tell you, "Hey, this is your" -- you know, "This is a good deal, you know. We're -- we're very nice to do this deal for this month and your people get paid this month. You don't have to, you know, finance it for two months to get started."

Q Okay. So they specifically told you, when they set up the first payment plan, that they were doing that to enable you to pay without having

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decisions made by the Target manager; right?

A Yes. Yeah. We didn't have a supervisor in the store.

Q The training conferences that you talked about attending, did Target require your attendance at these conferences?

A Yes.

Q Did Target personnel lead the meetings at these conferences?

A Yes.

Q Did Target pay your expenses for attending the meetings?

A No, not for these. Whenever we sent our regional people up, they paid for their trip to learn carpet cleaning techniques.

Q Okay. And was attendance at these meetings mandatory?

A Yes.

Q At the stores where Jim's provided cleaning services for Target, did any other companies provide cleaning services?

A I'm sorry. What was the question?

Q Where -- where Jim's was assigned a store to clean, was Jim's entirely responsible for cleaning that store?

A Yes.

Q You didn't do it along with other contractors?

A No.

Q You didn't do it along with -- with Target employees?

A No.

Q Okay. But the store had to be cleaned each night; right?

A Every night.

Q And had to be cleaned according to Target's specifications?

A Yes.

Q So the work -- the cleaning work that was done by Jim's crews was an integral part of the Target operation, was it not?

A Absolutely.

Q And you --

A One of the four things that Target is founded on -- one of them is clean, shiny stores.

Q And you indicated, in fact, that it reflected badly on the Target managers if the store was not cleaned properly; right?

A Absolutely.

Q It was one area in which they were evaluated on their performance; right?

A Yes.

Q Now, did Target, as a practical matter, sort of set a maximum number of workers you could hire to put into a store?

A No.

Q Now, you had "x" amount of money for a store, right --

A Yes.

Q -- that you were paid?

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6 And did that, in and of itself, create  
7 a lid on the number of employees you could --  
8 Yes.  
9 A -- pay and still meet your budget?  
10 Yes.  
11 Q So, to that extent, at least, did  
12 Target set a maximum number of employees you could  
13 hire to clean the store?  
14 MS. MILLER: Object to the form.  
15 Q (By Mr. Deats) Go ahead and answer.  
16 Yes.  
17 Q And when Target hired you to clean a  
18 store, you got one of these contracts that would have  
19 an initial term of, say, three years or something  
20 like that; right?  
21 Yes.  
22 Q And, basically, the -- Jim's  
23 Maintenance cleaning crews, once that contract was  
24 assigned, just worked on a -- sort of an ongoing and  
25 indefinite basis for Target, did they not?  
26 A A three-year contract.  
27 Q And even after the three-year term, it  
28 extended month to month unless it was terminated;  
29 correct?  
30 Yes.  
31 Q So the Targets really were -- I mean,  
32 excuse me, the contracts really were of indefinite  
33 duration, were they not?  
34 MS. MILLER: Object to the form.  
35 Q (By Mr. Deats) Go ahead and answer.  
36 I -- I suspect.  
37 Q And Target -- excuse me, Jim's crews  
38 were expected to clean the stores night after night,  
39 month after month, year after year; right?  
40 Yes.  
41 Q Did Target managers have the authority  
42 to decide when workers would do specific tasks, like  
43 stripping or waxing the floors?  
44 Yes.  
45 Q Do you recall whether or not Target  
46 ever required Jim's Maintenance to upgrade or change  
47 the types of equipment that were being used in the  
48 store?  
49 A No. We had good equipment. Whenever  
50 -- it was a requirement when we took over Oklahoma.  
51 They were very upset with the current contractor and  
52 they wanted new equipment in all the stores.  
53 Q And you mentioned that they indicated  
54 specific brands of a certain type of waxing and  
55 stripping equipment that they wanted used; right?  
56 Yes.  
57 Q Did they ever say, for example, "Well,  
58 you're using the Trenton 2000. We want you to  
59 upgrade to the Trenton 2500," or anything like that?  
60 I can't remember specifically.  
61 Q Okay. You may not have knowledge of  
62 this, and if you don't, please say so. Was Jim's  
63 Maintenance well capitalized, enough that it would be  
64 able to make payroll even if Target failed to pay for  
65 a period?  
66 A No. Absolutely not. Very slim  
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2 THE WITNESS: Thank you.  
3 MR. PIZZO: Can we take a break?  
4 (Short Break)  
5  
6 CROSS EXAMINATION  
7 BY MS. MILLER:  
8 Q Mr. Smith, my name is Shannon Miller,  
9 and I represent Target in this case.  
10 You and I met this morning; is that  
11 correct?  
12 A Yes.  
13 Q Do you understand that you're still  
14 under oath, even though a different attorney is  
15 questioning you?  
16 Yes.  
17 Q You and I have not met before today;  
18 is that correct?  
19 A We have not.  
20 Q You mentioned earlier this morning  
21 that you had met with Mr. Craig Deats, who represents  
22 the plaintiffs in this lawsuit?  
23 A Yes.  
24 Q When was it that you had that meeting?  
25 A Two months ago, maybe.  
26 Q Where were you when you had the  
27 meeting?  
28 A At Phil's office.  
29 Q When you say "Phil," are you referring  
30 to Phil Hurtt?  
31 A Hurtt, yes.  
32 THE WITNESS: Was that your --  
33 I'm sorry.  
34 MR. HURTT: Yes.  
35 THE WITNESS: I believe it was  
36 Phil Hurtt's office.  
37 Q (By Ms. Miller) Thank you.  
38 The other people who were at that  
39 meeting, can you review that with me again?  
40 A The gentleman in the white shirt, over  
41 there. (Indicating)  
42 Q And you're pointing to Justin Tullius,  
43 who is --  
44 A I believe so.  
45 Q -- a recent law graduate.  
46 Q And who else?  
47 A Jim Funderburgh, Bryan Funderburgh,  
48 Phil, and Craig.  
49 Q Was Mr. Beardall, Bill Beardall, who  
50 is sitting here, at that meeting?  
51 A No.  
52 Q And was there a Mr. Joe Berra at that  
53 meeting?  
54 A No.  
55 Q Was anybody recording what was  
56 discussed at that meeting?  
57 A I don't know.  
58 Q But you weren't -- nobody had like a  
59 tape recorder out in front of something --  
60 A I don't remember. I don't think so.  
61 Q Did Mr. Deats or anybody compensate  
62 you for the time that you met with them?  
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17 margins.  
18 Q So you had to get paid in order to  
19 make payroll?  
20 A Well, it's a service industry. It's  
21 not highly capitalized. Your -- I mean, it's  
22 payroll. Most of your payment is paying people.  
23 You're providing people.  
24 Q Do you recall any instance in which  
25 Jim's supervisors were required by Target to work a  
26 shift at one of the stores in San Antonio?  
27 A Where supervisors were locked in the  
28 store?  
29 Q Yes.  
30 A It happened. I don't remember  
31 specific instances, but, yes, Brandon had spent many  
32 nights where they wanted him in there.  
33 MR. PIZZO: Who?  
34 THE WITNESS: Brandon Stewart,  
35 our regional --  
36 Q (By Mr. Deats) Brandon Stewart was  
37 your regional manager?  
38 A Jimmy Funderburgh had been put in  
39 there, too.  
40 Q Okay. And who is Jimmy Funderburgh?  
41 A That's Jim's son in Dallas.  
42 Q And did Jimmy Funderburgh work for  
43 Jim's Maintenance?  
44 A Yes.  
45 Q What position did he hold, if you  
46 know?  
47 A He was kind of overseeing the south.  
48 Along with Brandon Stewart?  
49 A Yes.  
50 Q And so Jimmy Funderburgh and Brandon  
51 were required to go and work a shift in the San  
52 Antonio store?  
53 A Yes.  
54 Q And they were actually locked into the  
55 store?  
56 A Yes.  
57 Q And do you recall who made them do  
58 that?  
59 A The store manager required them to --  
60 they probably had a specific thing that they wanted  
61 done. They wanted that restroom stripped out or they  
62 wanted something -- carpets cleaned and they didn't  
63 want them to leave. They wanted to get it done.  
64 Q Okay. You mentioned that clean and  
65 shiny stores was one of the four principles that  
66 Target was founded upon.  
67 Q How did you learn that that was one of  
68 the four principles?  
69 A At Target training. We -- when we  
70 went up, I believe, for this one, the -- the CEO  
71 spoke to us, the CFO. Each one of them would talk  
72 about the importance of how the stores looked, and  
73 one of them just explained to us the four things that  
74 Target was founded on. One of them was clean, shiny  
75 stores.  
76 MR. DEATS: I pass the witness.  
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13 A No.  
14 Q How long did the meeting last?  
15 A Maybe an hour, maybe two hours.  
16 Q I believe you testified earlier that  
17 you discussed employment at the meeting. Can you be  
18 more specific for me?  
19 A I don't remember what --  
20 Q What did you all talk about at the  
21 meeting?  
22 A I guess about -- about the same stuff  
23 we talked about today.  
24 Q Did Mr. Deats go over a series of  
25 questions and answers with you?  
26 A No.  
27 Q Did you talk about the employment of  
28 the plaintiffs, the people who have been sued in this  
29 lawsuit by Jim's?  
30 A I don't -- we didn't talk about  
31 anybody specifically. We looked over forms, the same  
32 forms. You know, what is this form, what is that  
33 form, what's this do. (Indicating)  
34 Q And when you say "forms," you kind of  
35 motioned to the exhibits that have been entered in  
36 your deposition earlier.  
37 Q Is that the forms that you're talking  
38 about?  
39 A Yes. A few of those. Not all of  
40 those, but a few.  
41 Q Are there any forms that you went over  
42 with Mr. Deats that you don't -- you haven't seen  
43 today?  
44 A No.  
45 Q What did Mr. Deats tell you was the  
46 reason for the meeting?  
47 A I don't remember.  
48 Q Were you at all surprised that an  
49 attorney for people who were suing Jim's Maintenance  
50 was meeting with you?  
51 A Yes. Yeah.  
52 Q But you didn't -- did you ask any  
53 questions about that?  
54 A I think -- yes, "why am I here?"  
55 Yeah, I think I asked that.  
56 Q I don't remember the answer, though.  
57 Q Okay.  
58 A It would have been the smart thing to  
59 ask, but --  
60 Q Did you sign a statement -- a written  
61 statement that day?  
62 A I don't believe so.  
63 Q Have you, since that time, talked to  
64 Mr. Deats by telephone or e-mail?  
65 A No, ma'am.  
66 Q Have you talked to Mr. Justin Tullius  
67 by e-mail or telephone since that meeting?  
68 A No, ma'am.  
69 Q What did Mr. Tullius -- let me ask  
70 this. Did -- did Mr. Tullius talk at the meeting  
71 that you had?  
72 A No.  
73 Q Did Mr. Deats also question Mr. Jim  
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24 Funderburgh and Mr. Bryan Funderburgh at that  
25 meeting?

0223 A I think so. We were all there. I  
1 can't say "no." I -- I don't -- can you ask it  
2 again?

3 Q Sure. You and I've talked about Mr.  
4 Deats questioning you at that meeting?

5 A Yes.

6 Q And my question is: Did he also  
7 question Mr. Jim Funderburgh?

8 A I don't remember.

9 Q And did he also question Mr. Bryan  
10 Funderburgh?

11 A I don't know.

12 Q Did Mr. Deats discuss with you that if  
13 he were to recoup some kind of award for the  
14 plaintiffs in this case that he would give you some  
15 of that money?

16 A No, ma'am.

17 Q And is anybody paying you for your  
18 testimony today?

19 A No, ma'am. Phil bought my lunch.

20 Q Were Ruth Talent and Vickie Stover at  
21 that meeting?

22 A No.

23 Q How about Joyce Funderburgh? Was she  
24 at that meeting?

0224 A No.

1 Q Are you related to Jim Funderburgh by  
2 marriage?

3 A No.

4 Q I asked that in a very confusing way.

5 A Yeah.

6 Q Are you related, in any way, to --

7 A I am married --

8 Q -- Jim Funderburgh?

9 A No. No.

10 Q Is there -- are you married to Bryan's  
11 wife's sister?

12 A Yes.

13 Q Okay.

14 A Yes. Yes. I am married to formerly  
15 Keri Newman. He's married formerly to Chris Newman.  
16 So we're married to sisters.

17 Q How long have you been married?

18 A 13 years.

19 Q Did you know Bryan Funderburgh or Jim  
20 Funderburgh prior to your marriage?

21 A Yes.

22 Q And did you know them through dating  
23 who became your wife or --

24 A Bryan and I did not date, but we -- we  
25 0225

1 -- we went to high school together. Bryan is two  
2 years older than I am, and we went to high school  
3 together.

4 Q Okay.

5 A And I have been married 14 years. So,  
6 please, change that.

7 Q The address -- home address that you  
8 gave, do you run the business that you and Bryan have

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20 Q What was your job with them?

21 A I don't know. Part owner, I guess.

22 Q Who was the other owner of that  
23 business?

24 A Colby Greenhall and Paxton Gray.

25 Q Were you in charge, at Case of  
0228

1 Champions, of any kind of accounts for that company?

2 A Sales, yes.

3 Q How long had you done that?

4 A One year.

5 Q Did you know Harlin Murray from before  
6 you talked to him about Jim's Maintenance doing some  
7 Target work?

8 A No.

9 Q And I believe you testified you called  
10 a Target store?

11 A Uh-huh.

12 Q Who -- who did you speak with at the  
13 Target store you called?

14 A I don't remember.

15 Actually, to reach Harlin -- what did  
16 I do? I called a store in like North Carolina and I  
17 asked, "who is in charge of your cleaning services,"  
18 and they gave me Jim Jeravik, which is just below  
19 Mike Bell I later find out.

20 And I called Jim Jeravik -- I just  
21 asked the store manager for the phone number, how to  
22 reach him. They gave me Jim Jeravik's phone number.  
23 I reached him. He asked me a couple of quick  
24 questions, "where do you guys work, what do you do,"  
25 blah, blah, blah?"

0229

1 "Okay. Here's Harlin Murray's name.  
2 He's in Texas, he's got some stores opening," and he  
3 gave me the phone number to -- to reach Harlin  
4 Murray.

5 Q Did you know anybody at that Target  
6 store in North Carolina that you called?

7 A No, ma'am.

8 Q How did you choose a North Carolina  
9 Target store to call?

10 A It was just soliciting -- I don't know  
11 if we knew that stores -- they were adding stores in  
12 North Carolina or -- but just -- that's the way I  
13 would reach everybody. You call the store, "Hey,  
14 who's in charge of your cleaning," and then go from  
15 there. They give you a name, they may or may not  
16 pick up the phone and ask you to call another store,  
17 and just try to follow up on who's in charge where.

18 Q Okay. And I guess the way you said  
19 that -- had you called other Target stores before the  
20 North Carolina one told you about Jim Jeravik?

21 A No. I don't think so.

22 Q Okay. Well, you said this is the way  
23 you do it. I was trying to --

24 A All stores. When I call Barnes &  
25 Noble -- I'm just, as an -- an account rep, trying to  
0230

1 contact stores. You call a Wal-Mart, you just call a  
2 local Midwest City store, "who cleans your store?"  
3 who's in charge of it," and then they'll -- they'll  
4 give you your regional person, typically, who's in

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9 together out of your home?

10 A Yes. We use that mailing address.

11 Q And could you give it to me one more  
12 time? I don't think I got it right.

13 A 5921 Holzman, H-o-l-z-m-a-n, Avenue,  
14 Choctaw, C-h-o-c-t-a-w, Oklahoma, 73032.

15 Q Thank you.

16 And what is the name of that business?

17 A The business that we have is Sycamore  
18 Development.

19 Q And could you spell Sycamore, please?

20 A S-y-c-a-m-o-r-e.

21 Q Are there any other employees of  
22 Sycamore Development, other than you and Bryan?

23 A No.

24 Q How long has Sycamore Development been  
25 in business?

0226 A I think probably 2001 is when we  
1 incorporated.

2 Q Were you incorporated in the State of  
3 Oklahoma?

4 A Yes.

5 Q So while you were employed by Jim's  
6 Maintenance, you were also running this business with  
7 Bryan?

8 A Yeah. Just on the side.

9 Q And did you ever utilize the Jim's  
10 Maintenance office to conduct Sycamore Development  
11 business?

12 A Yes. I mean -- yeah.

13 Q Have you ever -- and Bryan ever had  
14 any other business together, other than Sycamore  
15 Development?

16 A No.

17 Q Do you have a sales background?

18 A Yes.

19 Q I believe you testified that you  
20 graduated from OU in '92 with a degree in business;  
21 correct?

22 A Yes.

23 Q What was the first job you had after  
24 college?

0227 A Baroid Drilling Fluids, Houston,  
1 Texas.

2 Q And what did you do for them?

3 A Mud engineer.

4 Q The job you had most close in time  
5 before you started working with Jim's, where was  
6 that?

7 A I worked for a company called Case of  
8 Champions.

9 Q Case of Champions?

10 A Three words.

11 Q Where is that located?

12 A Here, in Oklahoma City.

13 Q And what do they do?

14 A Decorate sports atmospheres.

15 Q I'm going to need some more help with  
16 that. What do you mean by "sports atmosphere"?

17 A We decorated sports restaurants, bars,  
18 university locker rooms.

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5 charge.

6 Q Before you -- Jim's Maintenance  
7 started doing Target work, did anybody from Jim's go  
8 to Minneapolis, where the headquarters are?

9 A No, ma'am.

10 Q When you started working at Jim's  
11 Maintenance, had there been somebody in your job just  
12 prior to you coming? Did you replace somebody?

13 A Not that I know of.

14 Q Did you, personally, ever hire a Jim's  
15 cleaner?

16 A I don't think so.

17 Q Throughout the day, you have testified  
18 a number of times that -- you have started it with,  
19 "Well I speculate this" or "It appears that it is  
20 this."

21 Am I correct that, when you say  
22 something like that, that means you don't really know  
23 for sure, that you're just guessing?

24 MR. DEATS: Objection, form.  
25 (By Ms. Miller) You can answer.

0231

1 A Now, how was it used.

2 Q Sure. You -- do you recall earlier  
3 today that you have said, "I speculate that's what  
4 that is?"

5 A I suspect. I use that a lot.

6 Q "Suspect," sure.

7 A I suspect.

8 Q When you say you suspect something,  
9 does that mean you know it for sure or are you  
10 guessing?

11 MR. DEATS: Objection, form.  
12 THE WITNESS: When I -- I would  
13 guess -- I suspect, when I say "suspect," that I'm  
14 meaning "yes," but I don't know for sure.

15 (By Ms. Miller) Don't know for sure.

16 Thanks.

17 A And I -- I -- I feel guilty if I would  
18 say -- I need to learn to say "I don't know" whenever  
19 I think "I think that's right," but I really probably  
20 need to say "I don't know."

21 But most of the time "I suspect"  
22 probably means "yes," but I'm not sure.

23 Does that answer your question?

24 THE WITNESS: Object to that  
25 answer?

0232

1 MR. BEARDALL: I suspect.  
2 THE WITNESS: You suspect that's  
3 right?

4 Q (By Ms. Miller) who, at Jim's, was  
5 actually in charge of hiring the cleaners?

6 A Supervisors, regional supervisors. I  
7 mean, I remember I -- I interviewed the supervisors,  
8 and -- and Bryan was the director of operations. So  
9 he filled those jobs.

10 Q Okay. I want to make sure I'm clear.  
11 Bryan Funderburgh --

12 A Yes, ma'am.

13 Q -- was the director of operations?

14 A That was kind of his title.

15 Q Was he also -- did he have other

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16 titles with Jim's Maintenance?

17 A Yes, ma'am.

18 Q Okay.

19 A In a small company -- I mean, you

20 could be in charge of many things.

21 Q Did you have a title, other than

22 account representative, at Jim's?

23 A Account representative? No. Pretty

24 much -- I mean, I might have done other things, but,

25 no, that was pretty much always what it was.

0233

1 Q How were you paid by Jim's?

2 A A monthly fee.

3 Q Was that a set monthly fee?

4 A Yes.

5 Q How much was that?

6 A I -- \$8,000 a month.

7 Q Did that ever change during your

8 employment with Jim's?

9 A Yes. Whenever we had a pay cut, it

10 got cut.

11 Q What was the lowest monthly fee you

12 would get?

13 A Lowest? In the beginning, it started

14 at \$3,000 a month.

15 Q And when did it increase to \$8,000 a

16 month?

17 A As I -- as we gathered more Target

18 stores, as our -- as our sales increased.

19 Q When Service Merchandise -- when you

20 stopped cleaning for Service Merchandise, that was

21 because they went out of business; correct?

22 A Yes.

23 Q And when you stopped cleaning -- when

24 Jim's Maintenance stopped cleaning for Marr's Music,

25 that was because they went out of business?

0234

1 A I believe so.

2 Q Right.

3 A I don't think there are Marr's out

4 there any more.

5 Q When those contracts went away, did

6 you do anything to try to get business, other than

7 the Target business?

8 A We picked up some small Barnes & Noble

9 accounts, but we really -- no. I -- we weren't in a

10 position to add new accounts. We had millions of

11 dollars in loans on equipment, and we -- we needed to

12 kind of grow through that. We needed to -- we needed

13 to kind of absorb that business. We had all of our

14 people in the field. All of our resources --

15 everything was max'd out.

16 Q To go out and pick up 30 or 40 Home

17 Depots or Lowes was not an option. You couldn't

18 finance all the equipment that you needed.

19 Q Did anybody from Target tell you that

20 you couldn't clean for another retailer?

21 A No, ma'am.

22 Q Where were the Barnes & Nobles that

23 you cleaned?

24 A Houston -- Houston and Chicago.

25 Q Did you -- Jim's Maintenance also

0235

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1 clean for Ross --

2 A Yes.

3 Q -- stores?

4 A Yes. But those -- yes, they did. I

5 didn't handle that, like I didn't handle the Service

6 Merchandise. Those were kind of already in place

7 before I came on board.

8 Q Did you handle the Barnes & Noble?

9 A Yes. Yeah. They were so minor. I

10 think it was two -- two or three stores in Chicago

11 and two stores in Houston.

12 Q The school that Jim's Maintenance

13 cleaned at the same time as Target, what was the name

14 of that school?

15 A EOC Tech Center. It stands for

16 Eastern Oklahoma County. It's in Choctaw, Oklahoma.

17 Q And were you responsible for bringing

18 in that account?

19 A I think so.

20 Q Bryan Funderburgh was in charge of

21 hiring the supervisors and the regional --

22 A Yes.

23 Q -- personnel?

24 A You didn't have any responsibility for

25 that?

0236

1 A No, not for hiring any of those.

2 Q And, again, you didn't have any

3 responsibility for hiring any of the cleaners who

4 actually cleaned the stores?

5 A No.

6 Q How many times have you been in a

7 Target store at night with the cleaners?

8 A Probably less than a dozen times.

9 Q Have you ever been in a Target store

10 in Texas at night with the cleaners?

11 A Yes.

12 Q What cities?

13 A San Antonio.

14 Q What store?

15 A 1785 and 1204.

16 In Oklahoma City, T-44; Kansas City,

17 1756 and 1757.

18 Q When were you at 1785 at night?

19 A That would have been in 2001, right

20 after its opening.

21 Q What was the purpose of your being

22 there?

23 A Training. Training new people, carpet

24 cleaning.

25 Q You, yourself, went and trained the

0237

1 cleaners on --

2 A Kind of both. I was being trained to

3 know what was going on and training them.

4 Q And did you ever go back to 1785, or

5 was it just that one time in 2001?

6 A Just that one time.

7 Q 1204, how many times did you go there

8 at night with the cleaners?

9 A Probably five or six times.

10 Q Do you remember what years that was?

11 A That would have been right when we

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12 took that over -- had taken it over, in 2000 -- when

13 was the first contract -- whenever the first

14 contracts -- right after we took the store over,

15 after it had opened.

16 Q If you found the opening date, it

17 would be immediately afterward.

18 Q And was your purpose the same as when

19 you were at 1785 for training?

20 A No. It was cleaning. We were having

21 hard times getting people and getting the store

22 clean. So I was staying, to try to help organize

23 what was going on and how we were going to get all of

24 that done and work around the Target people.

25 More of an operations mission than

0238

1 training mission.

2 Q And T-44, which is in Oklahoma --

3 A City.

4 Q -- when did you go there?

5 A Probably 2002. They sent a Johnson's

6 wax person down, and he trained Jim, Bryan, myself, I

7 think maybe Rob Mythen on carpet cleaning techniques.

8 Target had a specific Johnson's rep

9 that sold them all their products, and then he would

10 come and help you -- he would provide training to

11 show you how to use his products, use more of his

12 products.

13 MS. MILLER: Okay. The

14 videographer -- it's -- it's off; is that right?

15 THE VIDEOGRAPHER: It's off now.

16 (Short Break)

17 Q (By Ms. Miller) Mr. Smith, other than

18 in 2002, to see a presentation by a Johnson's

19 representative, did you ever spend any time in T-44?

20 A At night, no.

21 Q I believe you said you were at

22 T-1756 --

23 A Yes.

24 Q -- at night --

25 A Yes.

0239

1 Q -- is that correct?

2 A Yeah. Those were overnights, working

3 on tile issues. They had problems with their tile,

4 and I was working overnight, trying to figure out

5 what was going on, what our people were doing and

6 what's happening in there.

7 Q And when was that that you were in

8 1756 at night?

9 A In '03, 2003.

10 Q How are you sure it's '03?

11 A Because we didn't have them in '02, so

12 I -- I'm pretty sure it was -- right when we took

13 them over, the tile was in bad shape.

14 Q You testified that you were at T-1757

15 at night?

16 A Same reason as 56. Same store

17 concept, same tile, same --

18 Q And same time frame, 2003?

19 A Yes, ma'am.

20 Q Other than T-44, T-1756, T-1757,

21 T-1785, and T-1204, have you spent any time at night

22 in a Target store with the cleaners?

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23 A I can't remember any specific -- any

24 other specific times right now.

25 Q Mr. Deats asked you quite a few

0240

1 questions about what goes on at a Target store at

2 night, when Jim's cleaners are there, and you gave

3 him a lot of answers.

4 What were you basing that testimony

5 on?

6 A Being in a store --

7 MR. DEATS: Objection, form.

8 THE WITNESS: Being in a store

9 overnight and seeing what they were doing.

10 Q (By Ms. Miller) Okay. And -- and

11 those times that you've been in a store overnight are

12 the ones that we just -- just discussed and --

13 A There were more than those, but I

14 can't remember specifically, because I can remember

15 -- picture all those stores at night, in the dark,

16 and working with those crews, opening stores.

17 Austin -- I've been in many stores at

18 night in Austin, when we took over the Austin stores,

19 T-334, T-1061.

20 When we took over that market, I was

21 in those stores at night.

22 Q Do you remember what year it was that

23 Jim's Maintenance took over the Austin market, as you

24 call it?

25 A I think 2001.

0241

1 I was in T-44 for a week. I forgot

2 that. I was in -- when we took over the T-44 store

3 from -- from the previous contractor, I was -- I was

4 in that store for a week -- no, I'm sorry.

5 It was Norman, the Norman store.

6 T-46, I think. I was assigned that one individual

7 store when we took it over, to make sure that we had

8 a good, smooth transition, for a week. So I worked

9 with the crew in there.

10 Q And what year was that?

11 A That would have been right -- I guess

12 2001, right when we took over T-46, Norman, Oklahoma.

13 Q T-334, how --

14 A That's in Austin.

15 Q Do you remember how long --

16 A That's an Austin store.

17 Q Thank you.

18 Do you remember how long you -- how

19 often you visited there

20 Three or four --

21 Q -- overnight?

22 A Three times -- three nights, maybe.

23 Q In 2001?

24 A Right when we took it over. So I

25 believe that was 2001, maybe 2002.

0242

1 Q How about T-1061, in Austin?

2 A Two nights.

3 Q So am I correct, you based your

4 testimony earlier today, to Mr. Deats, about visits

5 to stores that happened in 2001 and 2002?

6 MR. PIZZO: Object to the form.

7 It doesn't state testimony -- misstates testimony.

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5 If -- if he started talking about how  
6 the Rangers were there, there was no communication at  
7 all.  
8 Q Well, how -- how would the Jim's crew  
9 know it was talking about carpet or not?  
10 MR. DEATS: Objection, form.  
11 THE WITNESS: I don't know.  
12 Industry -- just by being familiar with the industry,  
13 cleaning carpet every day. There --  
14 Q (By Ms. Miller) The Jim's employees?  
15 A Yes.  
16 Q Were you going to say something?  
17 A There was a lot of poor communication  
18 going on.  
19 Q What do you mean by that?  
20 A That not very many people that clean  
21 stores at night speak English, maybe less than one  
22 percent.  
23 Q Total speculation on my part, but --  
24 I was about to ask you if you had done  
25 a statistical study.  
26 A No. No.  
27 Q Were you in charge of leasing the  
28 equipment to be used in the Target stores?  
29 A No. I kind of located the equipment  
30 and priced the equipment, and Jim and Bryan handled  
31 all of the financial.  
32 Q How did you go about locating the  
33 equipment?  
34 A Calling reps that sold equipment  
35 lines.  
36 Q But you, personally, never executed  
37 the lease or did anything along those lines?  
38 A No, ma'am.  
39 Q I believe you testified that in 2001  
40 -- and we're referring still to the document that was  
41 marked earlier today, Plaintiff's Exhibit 2 -- that  
42 Target changed the process on who was assigned to  
43 clean certain stores and they took away the bid  
44 process of it.  
45 Is -- is that what you testified to?  
46 A No, ma'am.  
47 Q Now, who told you -- who from Target  
48 told you that?  
49 A Chris Carlson was in charge of the  
50 Building Services department that we were working  
51 with.  
52 Q Was Chris Carlson based out of  
53 Minneapolis?  
54 A Yes.  
55 Q What was it that Chris explained to  
56 you at this time, in 2001?  
57 A There was nothing explained. These  
58 stores were assigned to us. We didn't bid on them or  
59 -- they they took us a price, "can you clean --  
60 what markets would you be interested in," that was  
61 asked, and we said we would be interested in Texas,  
62 west Texas, Oklahoma, Kansas, and they invited us up  
63 to Minneapolis, and they gave us the pricing that  
64 they had come up with, on a trip to Minneapolis.  
65 Q Okay. Who is the "they" that invited

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15 you?  
16 A Chris Carlson.  
17 Q Anybody else?  
18 A There was another person there, but I  
19 don't remember who it was.  
20 Q Do you remember what -- what job they  
21 held with Target?  
22 A I -- I don't remember Chris Carlson's  
23 title.  
24 Q No. I'm sorry. You said there was  
25 Chris Carlson and another person; is that correct?  
0250  
1 A I believe it to be Mike Hannasch. He  
2 was assisting him during this change.  
3 Q Hannasch, do you know how to spell  
4 that?  
5 A H-a-n-n-a-s-c-h.  
6 Q And do you --  
7 A That's close.  
8 Q Do you know Mike's job with Target?  
9 A They -- these guys -- he was on a  
10 special assignment to help straight -- to help --  
11 help -- this was a big change, and they were just  
12 kind of -- Mike Hannasch was temporarily assigned to  
13 work with Chris Carlson to go through this change.  
14 Q And you said they asked you what  
15 markets you were interested in. when you say "they,"  
16 are you referring to Chris Carlson and Mike Hannasch?  
17 A Yes.  
18 Q And did they ask you, Trent Smith,  
19 personally, or somebody else at Jim's Maintenance?  
20 A I don't remember.  
21 Q And do you know who at Jim's  
22 Maintenance came up with the response to that  
23 question of what markets you were interested in?  
24 A That would have been all three of us,  
0251  
25 Bryan, Jim, and Trent.  
1 Q And I probably just heard you wrong  
2 earlier. I thought you said you weren't interested  
3 in the Kansas market, but you -- you told Target that  
4 you were interested in the Kansas market; correct?  
5 A As far as I'm very sure, no on this  
6 list. We -- we did not -- we said that we were  
7 interested, I guess. We put that on there, that we  
8 -- they asked us what areas were we strong in and  
9 what areas could we clean. We -- or would we be  
10 interested.  
11 A We sent a note up there identifying  
12 some states and regions. They sent us back an  
13 e-mail, letting us know about the Oklahoma, Texas,  
14 West Texas, that we were going to pick up some  
15 stores. We were -- I'll say that.  
16 A And so we set up a meeting. We went  
17 up to Minneapolis, they asked us some questions about  
18 how much money do we make, what kind of -- how much  
19 -- what's the profit percentage that you require, a  
20 bunch of weird questions.  
21 A And then he slipped us a piece of  
22 paper that had these stores, not including the Kansas  
23 stores. He slipped us a sheet of paper that had all  
24 the prices on these and said, "We would like you to  
25 clean these areas for this price."

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0252  
1 Q Okay. And who is the "he" that you  
2 say slipped you the paper?  
3 A Chris Carlson.  
4 And, then, about a -- and, then, he  
5 said, "I need to know" -- you know, he gave us a  
6 deadline, "You need to let us know if you accept this  
7 or not."  
8 And, then, about a week later, he  
9 contacted us and said, "would you be interested in  
10 taking these Kansas City stores," that -- another  
11 company had declined the Kansas City stores.  
12 Q And do you know the name of the other  
13 company who had declined the Kansas City stores?  
14 A It was Alex Dinverno.  
15 Q Was that the name of the company or  
16 that was --  
17 A No. That's the individual that owns  
18 the company. It's on that e-mail, but I -- I can't  
19 remember -- Prestige.  
20 Q Did you just say Prestige?  
21 A I think it's Prestige. If Prestige is  
22 based in Texas, that's who it was. I think it was  
23 Prestige.  
24 Yes, it's Prestige Maintenance USA.  
25 He declined the Kansas City market.  
0253  
1 Q Okay. And do you know that -- when  
2 Alex Dinverno declined the -- these stores, was he  
3 able to clean other Target stores?  
4 A Oh, yeah. Many. He took over St.  
5 Louis. He -- He had stores in Chicago. He was  
6 awarded many stores.  
7 This was during the changeover, when  
8 they went from 200 housekeeping contractors down to  
9 25, at this time.  
10 Q And did Chris require you to accept  
11 the Kansas City stores as a condition for keeping the  
12 other stores?  
13 A No.  
14 Q When he communicated with you about  
15 the Kansas City stores, did he communicate with you,  
16 Trent, directly, or was it to Jim or Bryan?  
17 A You know, he -- he communicated to all  
18 of us, all three of us. He would send an e-mail. We  
19 went and visited him together, you know. I don't  
20 remember him sending one e-mail to one of us or an  
21 individual.  
22 Q Did anybody force Jim's Maintenance to  
23 -- from Target -- did anyone from Target force Jim's  
24 Maintenance into signing this contract and taking  
25 these stores?  
0254  
1 A No. The only discussion on forcing  
2 anything was that -- whenever this started, you take  
3 the good with the bad. The rural stores, like  
4 Hutchinson, Kansas, you had to take that.  
5 You couldn't take a portion of a  
6 district. They wanted you to take the whole thing,  
7 because we tried to get out of one store in western  
8 Kansas, and he -- he -- that wouldn't work with what  
9 they were doing.  
10 They were giving these -- they were  
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11 trying to save money by district. If they got  
12 everybody and the economy's to scale in one district,  
13 they could get it lower than having two people.  
14 Q Okay. And when you said "he" earlier,  
15 are you talking about Chris Carlson?  
16 A Yes.  
17 Q Did anyone from Target tell you that,  
18 when you took over the Oklahoma stores -- cleaning  
19 the Oklahoma stores, that you had to have new  
20 equipment?  
21 A Yes.  
22 Q Who?  
23 A Harlin Murray.  
24 Q What area did Harlin Murray work over?  
25 A He had San Antonio, Austin, West  
0255  
1 Texas, and Oklahoma at that time.  
2 Q Did Mr. Murray tell you what kind of  
3 equipment you had to -- to buy?  
4 A It's on a list. There is a Target  
5 list of preferred equipment.  
6 Q Right. My -- my question was: Did  
7 Mr. Murray tell you what kind of equipment you had to  
8 buy?  
9 A No, ma'am.  
10 Q When Murray said "new," did you take  
11 him to mean new equipment or -- like brand new, out  
12 of the factory, or just replace the equipment that  
13 the old contractor had been using?  
14 A They were adamant they wanted new  
15 equipment. One reason being -- it was -- it was  
16 obvious that equipment that was in Oklahoma was  
17 atrocious. It was terrible what the previous  
18 contractor had, and whenever it was -- he pointed  
19 out, when we visited each store, "Look at this  
20 scrubber. It's all taped together. We want all new  
21 equipment. Get rid of it."  
22 So it was a big point when we took  
23 over Oklahoma.  
24 Q Okay. So Mr. Murray said, "We want  
25 new equipment. We all -- we want new equipment?"  
0256  
1 A Yes.  
2 Q The -- what did you refer to these --  
3 the first part of the contract, these sheets, what  
4 did you refer to these as?  
5 A Where the pricing --  
6 Q Pricing.  
7 A The pricing -- the pricing is on the  
8 front, you know, two or three, four -- well, eight  
9 sheets that has the monthly pricing.  
10 Q Okay. And you said you, yourself,  
11 worked with those sheets?  
12 A I took all of those numbers and put  
13 them on spreadsheets and added them up and divided  
14 them up and --  
15 Q Okay. Just for ease of reference,  
16 with my questioning, I was just trying to figure out  
17 what you, yourself, called these pieces of paper.  
18 A Contract.  
19 Q Contract.  
20 Okay. Can we agree to call them the  
21 contract pricing sheets?  
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22 A Contract pricing sheets.  
23 Q The contract pricing sheets, did they  
24 accurately reflect the payments that Target made to  
25 Jim's for cleaning these stores?  
0257  
1 A Yes.  
2 Q So there was never a situation where  
3 the contract would say Target would pay you a certain  
4 amount a month -- per month for a particular store  
5 that they didn't pay you that particular amount?  
6 A Only the last bill.  
7 Q Have you ever talked to Mike Bell  
8 directly?  
9 A No.  
10 Q To your knowledge, did anybody from  
11 Jim's Maintenance ever have an attorney review the  
12 contract that was entered into?  
13 A I do not know.  
14 Q Okay. I'm going to switch back to  
15 what was marked earlier today as Plaintiff's Exhibit  
16 1. I'm going to get you to look to -- I'm referring  
17 to -- it's Bates Stamp No. 03992 J, and I'm  
18 specifically looking at Paragraph 4.  
19 You testified earlier that you had  
20 specifically and thoroughly reviewed this contract.  
21 I'm going to ask you some questions about this  
22 particular provision, so if you need to take a chance  
23 -- a second to reread it, that's fine.  
24 A Okay.  
25 Q What was your understanding of that  
0258  
1 provision?  
2 A Of -- of all of Paragraph 4?  
3 Q Yes, sir.  
4 A That they did not want -- they wanted  
5 you to --  
6 MR. DEATS: I'm going to object  
7 as to form.  
8 THE WITNESS: I -- I don't know.  
9 They wanted you to follow all the  
10 laws, that we were responsible to follow all laws,  
11 and they didn't work for Target.  
12 Q (By Ms. Miller) who is the "they"?  
13 A That the cleaners did not work for  
14 Target.  
15 Subject to Target's right of  
16 inspection -- not of Target. All personnel of  
17 contractor used to perform services under this  
18 agreement shall be employees of contractor and not of  
19 Target.  
20 Q When -- I know you, yourself, never  
21 hired a cleaner personally, but when Jim's  
22 Maintenance hired cleaners, did they hire them as  
23 Target employees?  
24 A No.  
25 Q Do you know where anybody with Jim's  
0259  
1 Maintenance would have gotten the idea that the  
2 cleaners were hired as Target employees?  
3 A Other than being directed by Target  
4 and working for Target -- I mean, working under  
5 Target's direction, no.  
6 I mean, we never said, "You work for  
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7 Target."  
8 Q You never told a cleaner that?  
9 A We never -- no.  
10 Q What was the primary business of Jim's  
11 Maintenance?  
12 A Cleaning, housekeeping.  
13 Q For?  
14 A For Retailers, Target stores.  
15 Q And other retailers, other than  
16 Target, correct?  
17 A Some.  
18 Q -- that we've discussed?  
19 A Yes.  
20 Q You testified that, after 2001, the  
21 prices went down, and I -- I assumed you meant that  
22 Target started paying less for particular stores?  
23 A Yes.  
24 Q How was that communicated to -- to  
25 Jim's Maintenance?  
0260  
1 A They sent a letter that said, "This  
2 contract is null and void," and sent a new contract  
3 out.  
4 Q You're talking about in 2005?  
5 A I don't think so. It was right after  
6 they -- I think it was 2003.  
7 There's another contract after this  
8 one, with these same stores, where they -- they cut  
9 all the -- almost all the stores. Prices were cut.  
10 But it was another contract that Jim's  
11 Maintenance had to sign to enter --  
12 A The same thing.  
13 Q Nobody from --  
14 A Oh, there's lots of contracts like  
15 this. Whenever they would add -- say, another store  
16 opened in Kansas City, they would eliminate this one,  
17 send out a new one, just like this, with all these --  
18 with another -- all of this printed up, with this on  
19 the end. (Indicating)  
20 Does that make sense?  
21 So you would get another one every  
22 time, because you might add one store. You might add  
23 one store three times in a year, in March, in July,  
24 in August, whenever they're doing their openings. So  
25 this contract would be void, they give you another  
0261  
1 one.  
2 Q And were these stores that were  
3 opening in the districts that you were already  
4 servicing?  
5 A Yes, ma'am.  
6 Q And did you ever have stores cut from  
7 the stores you were cleaning?  
8 A No. Only stores that closed.  
9 After this, we were awarded New Mexico  
10 and Arkansas and other parts of Missouri.  
11 (Defendant's Exhibit No. 1 was  
12 marked for identification)  
13 Q (By Ms. Miller) I'm going to show you  
14 what's been marked as Defendant's Exhibit 1.  
15 MS. MILLER: Oh, I didn't get  
16 enough.  
17 MR. PIZZO: Thank you, Counselor.  
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 MS. MILLER: You'll have to look  
 at it together.  
 THE WITNESS: Those two were  
 closed.  
 Q (By Ms. Miller) Have you ever seen  
 what's been marked as Defendant's Exhibit 1 before  
 today?  
 A I don't remember. No. I don't think  
 so.  
 Q Okay. You were referring, a little  
 while ago, about when things changed, you got  
 notices.  
 A Is this the type of document that  
 you're talking about?  
 A No. That's not what I was referring  
 to.  
 Q While we're on this one, just so that  
 I understand, "these two stores," you're talking  
 about T-45 and T-174?  
 A Those were both closed. They were  
 replaced with new stores. So they would send this  
 out to cut those, you know -- whenever they added  
 stores, I don't remember seeing anything like this.  
 I think we got a new -- a full -- it  
 seemed like we got a full document, everything added  
 up, because they would send us a new billing  
 arrangement.  
 But this is -- this is whenever they  
 closed one. I don't know if they have one for  
 whenever they open them.  
 Q Okay. And who, from Target, was  
 sending the new contracts when the changes would take  
 place?  
 A I guess, a long time ago, it was Mike  
 Bell, which he wasn't really doing it. He was just  
 -- well, it has his name, so I must -- he must have  
 been in charge of it.  
 But Debra Darsow was the person -- I  
 think that's her name. It's on another contract.  
 Q And do you know what Debra Darsow's  
 job with Target was?  
 A No. Building Services.  
 Q Did you ever talk to Debra Darsow  
 yourself?  
 A Insignificantly, questions. Maybe  
 once in five years.  
 Q So, yes, you've talked to her once  
 personally?  
 A Yes, I talked to her.  
 Q When the change happened that you have  
 described, about how Target changed the way that it  
 communicated with the cleaning contractors -- I  
 believe you said they took it from the field to  
 corporate?  
 A Yes.  
 Q Is that an accurate description of  
 what happened?  
 A Yes.  
 Q You said that STLs, the store team  
 leaders, were frustrated with that. How -- how did  
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 business.  
 How about four years later? What --  
 why weren't you making efforts to go out and get  
 other business?  
 A Well, it didn't all happen at one time  
 in 2001. This was just -- I don't know how many  
 stores this is. One, two, three, four, five, six,  
 seven, eight, nine, 10, 11 -- that's just 33 stores.  
 After this, we added another 50  
 stores. At one time, we were over 80.  
 So by just adding districts -- adding,  
 you know, six stores in New Mexico, you -- you -- we  
 didn't have the resources.  
 I mean, we didn't have the people. We  
 didn't have the money. We didn't have the credit to  
 go out and absorb that many more loans to pay for  
 that expansion.  
 It costs a lot of money to -- to take  
 over markets.  
 Q Okay. In 2005, when the -- you said  
 the process changed again?  
 A Yes.  
 Q Did you receive notification that you  
 were losing certain contracts with -- with -- you  
 were losing certain Target stores and certain Mervyn  
 stores?  
 A No, not until after the contracts were  
 awarded.  
 Is that what you mean? Because they  
 were awarded in September '05.  
 Q Okay. In September of '05, you -- you  
 learned --  
 A That's when we were notified -- well,  
 before then, you're notified a month or so before  
 that, so that you can get ready for that date.  
 Q And, in September of '05, did you lose  
 some of the stores that you were servicing?  
 A Yes.  
 Q Do you have an idea of how many?  
 A No. Probably 10. We lost as many as  
 we picked up, pretty much.  
 Q Are you -- are you certain about that?  
 A It's pretty close.  
 Q Okay. So you're --  
 A I don't think it's way off.  
 Q So you're saying you stayed -- after  
 September of '05, you stayed in the 80-plus range of  
 stores?  
 A Or high seventies, something like  
 that.  
 Q Well, how about Mervyn stores?  
 A Mervyn's was sold, so we started  
 subbing -- they hired a company in Houston, and we  
 started going through a company in Houston to clean  
 those stores.  
 Q And, at some point, did you lose that  
 Mervyn's work?  
 A Yes.  
 Q When was that?  
 A I don't remember. I don't remember if  
 those stores closed or if they -- I don't know if  
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 you know that?  
 A They were -- after the change had  
 occurred and we reported to Minneapolis, was assigned  
 this contract to us, instead of the field, like a  
 Harlin Murray, the stores just didn't know who to  
 communicate with.  
 There was more -- Building Services in  
 the field was -- they all kind of lifted their hands  
 and said, "we're -- okay. Well, obviously, this  
 isn't up to us any more. We didn't negotiate these  
 contracts. We didn't hire these contractors. I  
 didn't pick them for Kansas City. I picked somebody  
 else."  
 They were taken -- it was their turf  
 and it was taken away from them. So there was -- the  
 stores didn't know who to turn to for help.  
 They had always called their regional  
 Building Services person, and now he was not the  
 person to go to.  
 Q Okay. Did you talk to an STL, anybody  
 in person, to come up with this opinion about --  
 A Yes.  
 Q -- their thoughts?  
 A Who?  
 A Mark Chada in Norman.  
 A Any other STLs?  
 A Nothing specific.  
 Q Do you -- do you recall if you talked  
 to any STL other than Mark Chada?  
 A Yes. Yes. I don't remember their  
 names.  
 Q And were these STLs in Oklahoma?  
 A And DTLs. You can put that. The  
 district team leads are over the STLs. They probably  
 have eight stores or something.  
 They would call us in, we would have  
 meetings, and they would say, "What's going on?  
 where do we get relief here? And who are we supposed  
 to contact now?"  
 It was not a -- it was not Jim's  
 Maintenance or Oklahoma specific. It was Target. It  
 was just a big change that they went through on who  
 -- who reported to who.  
 Q And who are the DTLs that you spoke to  
 about this?  
 A It was Chris in Kansas City, Ted in  
 Austin, Ken in Oklahoma City.  
 I can't remember the names of the  
 other team leaders.  
 Q You testified earlier that, when  
 Target reduced the monthly rate for the stores, you  
 took a pay cut.  
 Did Target ever pay you directly?  
 A No.  
 Q What did you mean by that?  
 A Jim's Maintenance cut my pay.  
 Q Were you paid based on a percentage of  
 the Target contracts?  
 A No.  
 Q And you testified that, early on, you  
 didn't have the means to go out and get other  
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 they're open. I don't know why --  
 Q And when you lost those Mervyn stores,  
 did you think to go out and try to get some other  
 work to fill what you had lost there?  
 A No.  
 Q Why not?  
 A I don't know.  
 Q You don't have any idea?  
 A No. We didn't have the money to go do  
 it. I know that. We were -- we -- these were very  
 skinny contracts, and there's not much profit there.  
 Q In 2005, the bid process -- who told  
 you that it was going to change from what you called  
 the assignment of stores to a bid process?  
 A Ted Fischer.  
 Q And did Ted communicate directly with  
 you?  
 A Through Bryan -- to Bryan.  
 Q To Bryan?  
 A I guess the e-mails would go to Bryan.  
 We would have conference calls, and Bryan and myself  
 would be on them.  
 Q And who was on the line from Target?  
 A Ted Fischer. He had taken Chris  
 Carlson's place.  
 Q Have you ever had a conversation with  
 Ted Fischer just by yourself?  
 A Yes.  
 Q Any conversations with Michelle, who  
 you referred to earlier, the Target employee?  
 A She came to a meeting in Las Vegas.  
 Q And does Moore sound correct for her  
 last name?  
 A Yes. Its Michelle Moore.  
 There was a show in Las Vegas, and she  
 came to that.  
 Q Was it a show like a -- like the  
 Johnson's rep kind of show?  
 A No. No. This was -- it's an industry  
 show, industry cleaning, housekeeping show, and  
 then, Target -- we would have meetings -- like we had  
 a meeting in the Las Vegas Convention Center for a  
 couple of hours, to go over things, and he invited  
 Michelle.  
 She didn't come to that meeting, but  
 she was there as we walked around. We would all walk  
 together, through the show, with Ted Fischer, all of  
 us following him, and looking at the new products,  
 new cleaning techniques.  
 Q Okay. And the "he" that you were  
 talking about was Ted Fischer?  
 A Ted Fischer.  
 Q And this was Jim's Maintenance and  
 other cleaning contractors?  
 A All of them, the other 24.  
 Q Did anyone at Target tell you how to  
 come up with the bids that you put on the stores in  
 2005?  
 A No, other than you must bid by  
 district. That's about the -- and then there was a  
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10 packet. There were several pages in there of things  
 11 you needed to fill out, but nobody communicated to us  
 12 verbally or anything like that.

13 Q You testified earlier about some  
 14 feedback that you got once you started the bid  
 15 process.

16 Was that same feedback provided to the  
 17 other contractors --

18 A I --  
 19 Q -- cleaning contractors?  
 20 A Yes. I would believe so.  
 21 Q Did you see any of that other  
 22 feedback?

23 A No.  
 24 Q They only gave you feedback directed  
 25 at your particular bids?

0272 A What you bid on, yes.  
 2 Q Okay. If you were not awarded a bid,  
 3 was it communicated to you who did receive it?

4 A No.  
 5 Q Jimmy Funderburgh's job, what was  
 6 that?

7 A He oversaw the southern region.  
 8 Q Okay. And was Texas in the southern  
 9 region?

10 A Yes.  
 11 Q And did -- I may have this wrong. Did  
 12 Bryan Funderburgh have the northern?

13 A Yes.  
 14 Q So anything specific to Texas, Jimmy  
 15 Funderburgh was in charge of?

16 A Yes.  
 17 Q You testified earlier that there was a  
 18 financial hardship for the cleaning contractors when  
 19 Target changed the time frame in which it paid on the  
 20 contracts.

21 Were you ever given access to other  
 22 contractors' financial records?

23 A No.  
 24 Q You were not in charge of payroll;  
 25 correct?

0273 A No.  
 2 Q I'm not correct?  
 3 A Well, I mean, I -- I didn't pay. I  
 4 didn't like load the cards. I didn't do all of that.

5 Q That was --  
 6 A I -- I mean, I -- I set up the pay  
 7 schedules. All those forms, I created those, put  
 8 those together, distributed them to the field, so --

9 Q And when they came back from the  
 10 field, who did they go to?

11 A They didn't come back from the field.  
 12 We got --

13 Q The payroll time sheets?  
 14 A Payroll time sheets came in, she would  
 15 pay it. She would get me the information on what we  
 16 did, you know, and then I would take it all and let  
 17 the supervisors know, "This is where you're over  
 18 budget. This is where we need to make changes."  
 19 Q Okay. But when the payroll time  
 20 sheets came in --

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21 A Yes.  
 22 Q -- to Jim's corporate office who did  
 23 they go to?

24 A Vickie.  
 25 Q Vickie. Is Vickie's last name Stover?

0274 A I believe so.  
 1 She would pay those -- pay that off  
 2 those time sheets.

3 Q And is Vickie the best person to  
 4 testify about payroll practices?

5 A She paid the people. I mean, she  
 6 punched the cards in. She typed it all up.  
 7 She wasn't in charge of any of that,  
 8 but she -- that's what she did.

9 Q Did anyone direct her in how much to  
 10 pay a particular person?

11 A Yes.  
 12 Q Who?

13 A I guess that would be Bryan -- Bryan  
 14 and Jimmy ultimately.

15 We would hire somebody and the  
 16 regional -- they would go over -- Bryan would go over  
 17 with the regional. These are what your budgets are  
 18 for all your districts.

19 The regional would go over with the  
 20 districts, "This is what your budget is for each  
 21 store," and then they hired them and said, "Okay. I"  
 22 -- I mean -- so, really, the district supervisor  
 23 might hire the person and say, "This is going to be  
 24 my lead guy. My budget is \$2,300. I'm going to pay  
 25 him \$700. I'm going to pay this guy 600 and this guy  
 0275 500."

1 So who's responsible for that -- I  
 2 mean, it goes all the way up to all of us, but the --  
 3 the district supervisor is who we would call to make  
 4 changes, "Hey, this guy is making too much. Maybe  
 5 you can transfer him to another store," or something.

6 Who hired, who made those decisions --  
 7 the regional would have been -- is responsible for  
 8 how much money we were spending. So he would -- does  
 9 that answer your question?

10 Q So the -- but the district  
 11 supervisor --

12 A Enforced --  
 13 Q -- determined how much a particular  
 14 cleaner was going to make?

15 A He had a budget to stay within, and he  
 16 could make those decisions within that budget. He  
 17 could appeal to his, you know, regional manager and  
 18 say, "Hey, this guy is really good. I know my budget  
 19 is this, but this is a difficult store and a  
 20 difficult STL. Can we pay him a little bit more on  
 21 this budget, and then I cut back over here? I really  
 22 don't need that much at this store. It's really  
 23 easy."

0276 A So who made those decisions? The  
 1 district supervisor asked the regional supervisor if  
 2 that would be okay.

3 Q And the regional supervisor had the  
 4 authority to okay that?

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6 A As long as it was within budget, yes.  
 7 Q Did you ever review the report that  
 8 Price-waterhouse completed?

9 A No.  
 10 Q When Price-Waterhouse was there, at  
 11 Jim's, did you talk to the individuals?

12 A Yes.  
 13 Q And what did you talk --  
 14 A Casually, just casually.  
 15 Q Did they interview you in any  
 16 capacity?

17 A I don't think so.  
 18 Q Did you help prepare for the audit?

19 A No.  
 20 Q Did you ever instruct anybody to  
 21 remove documentation from files?

22 A Nothing -- no, nothing like that  
 23 happened.

24 Q You deny doing that?  
 25 A I deny doing that, yes, and deny  
 0277 1 knowing of anything like that that was done.  
 2 Q You didn't review the report that  
 3 Price-waterhouse completed, but did anybody ever  
 4 communicate to you what their findings were?

5 A No.  
 6 Q Did you have a guess or a speculation  
 7 as to what they found?

8 A No. They didn't -- I wasn't  
 9 communicated any of that.

10 Q I just didn't know. Sometimes you  
 11 were able to speculate on what Target might think or  
 12 do. I just didn't know if you had --

13 A No.  
 14 Q -- any speculation on that.

15 MR. DEATS: Objection, form.  
 16 (By Ms. Miller) Plaintiff's Exhibit  
 17 3, which is the contractor handbook, have you -- did  
 18 you ever review this page by page?

19 A No.  
 20 Q I'm going to show you what was marked  
 21 earlier today as Plaintiff's Exhibit 4. Had you  
 22 reviewed that prior to today?

23 A I have seen this.  
 24 Q My question was: Had you reviewed  
 25 that prior to today?

0278 A Reviewed? No, I had not reviewed  
 1 this. Even when it came the first time, I did not  
 2 review it.

3 I looked at these numbers -- what did  
 4 we call them? The contract pricing sheets. I  
 5 reviewed the contract pricing sheets and put those in  
 6 the forms and divided those up.

7 Q Let me show you what was marked as  
 8 Plaintiff's Exhibit 5 earlier today. Had you  
 9 reviewed that --

10 A Yes, ma'am.  
 11 Q -- prior to today?

12 A Yes, ma'am. That would be something I  
 13 would have reviewed.

14 Q I'm going to show you what was  
 15 previously marked as Plaintiff's Exhibit 7 today.

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17 Did -- tell me again what you called this.  
 18 A Brand guide brochure.

19 Q Okay. And am I correct that the brand  
 20 guide speaks to contractors other than housekeeping  
 21 or cleaning contractors?

22 A It speaks to several, like the  
 23 landscaping. It's to help the STL know -- the con --  
 24 they don't expect the store manager to review this  
 25 book for all of these contractors.

0279 A So they kind of broke it down on the  
 1 highlights of what -- for the STL to understand,  
 2 "Okay. Mr. STL, this is what Building Services is  
 3 responsible for. This is what your contractor is  
 4 responsible for. This is what your team members are  
 5 responsible for." in a highlighted fashion, to just  
 6 help break it down on landscaping.

7 So that would help them score -- help  
 8 them score red light, green light, yellow for these  
 9 different areas.

10 Q Okay. And who from Target explained  
 11 that to you?

12 A This would have been -- Chris Carlson  
 13 come up with this.

14 Q Am I correct, Jim's Maintenance did  
 15 not do landscaping?

16 A No, ma'am. No landscaping, no parking  
 17 lot.

18 Q Signage? Did you all do signage?  
 19 A No signage.

20 Q Okay. So this brand booklet covered  
 21 things other than what Jim's Maintenance was  
 22 responsible for; correct?

23 A Yes. I don't know what the percentage  
 24 of that booklet is, but a large percentage of it is  
 0280 housekeeping, but there are other things.  
 1 Refrigeration is in there.

2 Q Let me show you what was previously  
 3 marked as Plaintiff's Exhibit 8, the monthly  
 4 housekeeping quality checklist.

5 Did you, yourself, ever review -- were  
 6 you ever in a Target store when a Target manager was  
 7 completing this form?

8 A Yes.  
 9 Q Okay. And what store was that?

10 A T-46.  
 11 Q The one in Norman?

12 A Yes.  
 13 Q On how many occasions were you in the  
 14 Target store when the Target manager --

15 A To do a walk-through?

16 Q Yes.  
 17 A Probably 20.

18 Q Who -- you said -- you testified that  
 19 you sent these to Target. Who at Target did you send  
 20 them to?

21 A Building Services.  
 22 Q Who at Building Services?  
 23 A Becky.  
 24 Q Is Becky's last name Nielsen?

0281 A Yes.

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Q Do you know what Becky's job was?

A She worked for Ted Fischer. Now, this -- this was -- this was not forever. They didn't do this for a long time.

Q We started off doing this and then just keeping copies. This -- this was all being developed. They were just kind of making it up as they went.

Q They came out with this, and we started leaving them inside of the book, the big book, like this, that was in the Target stores. (Indicating)

Q And then they decided they wanted to score them up in Minneapolis. So then they asked us to send them to them. We did that for maybe a year.

Q Then they asked us, "Okay. Quit sending these to us. Just e-mail your scores," and they would send us a form. The form that had all the stores, like an Excel, and you would just mark them. and I would e-mail it to them.

Q Then they would compile them all and send them out to everybody. Then they changed that, and they had this store manager start downloading it into a system.

Q Maybe that's what they were trying to ultimately get to and stumbled along until they had that ready.

Q Okay. And did you, yourself, package them up to send them to Target, or did somebody else in Jim's Maintenance office do that?

A I don't remember.

Q Let me show you what was previously marked as Plaintiff's Exhibit 9. Did you create that exhibit?

A No. This is later. This is in 2004.

Q Okay. Did you ever create anything that looks like Plaintiff's Exhibit 9?

A Yeah. I mean, I -- I would -- I would take this and create -- I didn't create this one. This is a Target report.

Q I -- I would change it around to our districts and give it to our people, so, you know, our guy would have his stores.

Q Okay. So you would --

A Create --

Q -- reformat --

A Reformat, yes. I didn't create --

Q -- the report?

A -- that report.

Q Did this report come to you at Jim's or was it sent --

A This was --

Q -- to somebody else?

A This was sent to me.

Q And how did you receive it?

A By e-mail.

Q What was your e-mail address at --

A Trent@jimsMaintenance.com.

Q No apostrophe after the "M," before the "s"?

A No, no apostrophe.

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Q I might go in there and say, "Okay. We've got to get to the bottom of this," and start looking up these and trying to figure out what happened.

Q So I did not do it by myself.

Q Did you provide any documents to Craig Deats at the meeting that you had with him, that we discussed earlier?

A Not that I know of. I did not. I -- I don't think we did.

Q Let me show you what was previously marked as Plaintiff's Exhibit 15. Had you seen that document prior to today?

A Not specifically.

MR. DEATS: I'm sorry. What document were you looking at?

MS. MILLER: Sorry. Plaintiff's Exhibit 15.

(By Ms. Miller) who would have been responsible for that type document at Jim's Maintenance?

A In '04, it might have been -- probably Vickie. I don't know.

Q I don't know, actually, who was -- who did it at that time, who -- who would print that off or why they needed it.

Q Let me show you what was previously marked as Plaintiff's Exhibit 13. You testified that you, yourself, created that document?

A Yes.

Q Did anybody from Target require you to use that type form?

A This has nothing to do with Target.

Q Did anyone from Target tell you to use shift pay to pay your employees?

A No.

Q My understanding of your testimony about shift pay was that you paid your employees by the day; is that correct?

A Yes.

Q You -- if you paid them by the day, why did you -- did you ever think about how many hours they were actually working during a day?

A No. We trained them to work eight hours a day.

Q Who is the "we" that trained them?

A Jim's Maintenance management.

Q Who, specifically, at Jim's Maintenance management?

A Trent Smith, Bryan Funderburgh, and regional managers.

Q And how many cleaners did you, yourself, personally train?

A Not very many.

(Defendant's Exhibit No. 2 was marked for identification)

(By Ms. Miller) Let me show you what's been marked as Defendant's Exhibit No. 2.

Q Have you seen that document before today?

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Q Have you ever seen a brand score card posted in a Target store?

A Not this one. It would be the scores -- this -- this report here. I don't know if you guys have it. It's called a brand maintenance score card, and it was by district.

Q So this -- this report would be posted in between the restrooms, above the water fountain, in the back of the store.

Q I'm going to show you what was previously marked as Plaintiff's Exhibit 11. This is a document you created?

A I created that.

Q Okay. With the bids that you came up with in 2005 on the particular stores?

A Yes.

Q Okay. And am I correct that this plus/minus column shows whether or not the bid was over or under what you had received for that store in 2005?

A Yes, ma'am.

Q Okay. And you controlled whether or not you were bidding something higher or lower; correct?

A Yes. I don't know what this form was on -- do you know on what round?

Q We did this -- there were two bid -- bidding processes and, then, there were three rounds in each one.

Q So this document doesn't -- I didn't have it marked. I don't know what this means. This could have been the first one, it could have been the last one. I don't know.

Q This was just in-house, for our managers to be able to figure out, you know, what was -- because our bidding strategies -- this was for bidding strategies, is what this was.

Q Let me show you what was previously marked as Plaintiff's Exhibit 12. Had you seen that document before today?

A Not that document. I have seen documents similar to that, but I have not seen that document.

Q And did Jim's Maintenance have a practice of printing out the CashLink reports that reflected where somebody made withdrawals?

A No, ma'am. That was only kind of on demand, if somebody called and had a question. We -- we made all of this available. If anybody called, "Hey, I'm missing," blah, blah, blah, then we would look it up and find out, try to track down what happened.

Q And did you, yourself, look the information up?

A No.

Q Who would do that?

A Vickie.

Q Did you ever look up anything on CashLink?

A Just like over her shoulder. I never sat down at her computer and did it myself.

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A No, ma'am.

Q And it is entitled "Jim's Maintenance Shift Pay Policy." Take your time to read over it, but I'm trying to figure out if -- if that shift pay policy document reflects -- accurately reflects what you think of when you say "shift pay."

A Pretty much, yes.

MR. DEATS: Shannon, can we go off the record for a second?

MS. MILLER: Sure.

(Short Break)

(By Ms. Miller) Mr. Smith, you testified that this -- this, Defendant's Exhibit 2 -- you had not seen this document before, but this accurately reflected your understanding of shift pay when you say that word?

A Yes.

Q Okay.

A 10:30 to 6:00, yeah. That looks about right.

Q And, up at the top, it has got "Jim's Commercial Cleaning Services, Ltd., Established 2003."

Q Did -- did Jim's change their corporate structure at some point, change the name of the company?

A I don't know about that. I -- whenever I came on, I -- I had them create this -- we paid to have this logo created.

Q And they had been using Jim's Maintenance, Jim's Commercial Cleaning, this and that, and I was just trying to establish a logo, Jim's.

Q So the things that are underneath it, I don't know about. I'm not sure about.

Q Okay. And as far as the shift pay policy was concerned, is this the entirety of that policy?

A You know, I don't know. I think that that -- I'm not sure. It looks like it sums it up, that they wanted to make sure that everybody understood, to sign that when they hired them.

Q Okay. You described a process earlier of a Target manager having an issue with something not being cleaned appropriately in the store and they would send you -- or call you -- call a 1-800 number and you would get --

A An e-mail.

Q -- word of that?

A A work order.

Q A work order.

A It would generate a work order.

Q Was that referred to as BSOC?

A Yes.

Q Okay.

A Yeah, but that -- you know, that wasn't the whole five years we were doing this. This was towards the end, maybe 2003, when BSOC started.

I don't know.

Q Yes, BSOC, B-S-O-C.

Q Do you know what that acronym stands

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20 for?  
 21 A No. I would guess it starts with  
 22 Building Services.  
 23 MR. BEARDALL: Could we ask for a  
 24 spelling of that?  
 25 MS. MILLER: Yes.  
 0291 Q (By Ms. Miller) Can you spell the  
 2 letters that make --  
 3 A B-S-O-C, I believe.  
 4 MR. PIZZO: I think he already  
 5 did that.  
 6 THE WITNESS: I did it too  
 7 fast --  
 8 MR. PIZZO: You have to wake up  
 9 over there.  
 10 THE WITNESS: I did it too fast  
 11 for you guys.  
 12 Q (By Ms. Miller) would Jim's cleaners  
 13 ever come into a store when the store was open to the  
 14 public?  
 15 A A cleaner?  
 16 Q Correct.  
 17 A No. Only if they got there before  
 18 10:00, you know, a few minutes early, but, no, they  
 19 did not go to --  
 20 Q And do you know how they entered the  
 21 store if they got there before the store closed to  
 22 the public?  
 23 A Before the store -- they would go  
 24 through the front doors, unless it was a Super  
 25 Target. Super Target has a separate entrance for --  
 0292 for employees and for our people to go through.  
 2 Q And, yes, you're -- you're pointing at  
 3 a page on --  
 4 A The brand maintenance guide -- this  
 5 was created by BSOC, B-S-O-C, Building Services  
 6 Operations Center, and they put this 800 number and  
 7 e-mail address for people to contact them.  
 8 Q Okay. I just want to make sure the  
 9 record is clear. You're -- you're pointing to a page  
 10 of Plaintiff's Exhibit 7; correct?  
 11 A Yes.  
 12 Q I'm going to show you what was  
 13 previously marked as Plaintiff's Exhibit 19, "Target  
 14 Morning Checklist."  
 15 who at Target required Jim's to use  
 16 this?  
 17 A We were given this, as a tool, by  
 18 Chris Carlson.  
 19 Q Did Chris Carlson tell you you were  
 20 required to use that form?  
 21 A No. He said, "This is a tool that you  
 22 could use on the" -- this was when English speaking  
 23 was a big problem, when some stores were saying, "Oh,  
 24 you've got to have an English-speaking person in  
 25 here," and Target was trying to come up with -- well,  
 0293 1 Building Services was trying to come up with  
 2 something that would work for the stores and the  
 3 contractors.  
 4 Then, they went to all of them  
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5 carrying cell phones, so that you could call in a  
 6 phone number to an English-speaking person and then  
 7 the store manager could talk on our phone to an  
 8 English-speaking person, who could translate it to  
 9 our cleaning crew, to try to address the  
 10 communication issue.  
 11 Q And just so I'm clear, no one from  
 12 Target told you that you were required to use this  
 13 morning checklist?  
 14 A That's correct.  
 15 You know, I think Becky did ask for  
 16 that whenever we were having bad -- when the stores  
 17 were red, she would ask, "Are they doing the morning  
 18 checklist?"  
 19 That was pretty much standard protocol  
 20 for the first round of -- if -- if a store didn't  
 21 look good, if somebody had complaints, she would ask  
 22 immediately, "Are they doing the morning checklist,"  
 23 and you say, "Well, no. Let me make sure that  
 24 they're back on that."  
 25 So I would call that required.  
 0294 Q Did anybody say to you, "You have to  
 2 use this form"?  
 3 A Not in those words.  
 4 Q You testified that you -- that you  
 5 anticipated that the cleaners would work eight hours  
 6 each day?  
 7 A Yes.  
 8 Q If that was the case, why didn't you  
 9 calculate their shift pay by the hour instead of the  
 10 day?  
 11 A We didn't really need it by the hour.  
 12 We just paid by the day. It was easier.  
 13 Q Let me show you what was previously  
 14 marked as Plaintiff's Exhibit 20. Did anyone from --  
 15 and just so we're clear, this was a Target document;  
 16 correct?  
 17 A Yes, ma'am.  
 18 Q Did anyone from Target ever explain to  
 19 you that they kept these logs for security and asset  
 20 protection purposes?  
 21 A No, not for asset protection. I  
 22 thought -- I thought -- it was explained to me -- I  
 23 could have been wrong, but I thought it was for  
 24 emergencies, that they wanted to know who was in the  
 25 store, at what time, in case the police or in case  
 0295 the fire department came in.  
 2 I don't know if that falls under the  
 3 same --  
 4 Q The notebook, where you said these  
 5 were -- these logs were maintained, were there places  
 6 for other contractors to sign in?  
 7 A No. That was a separate one. There  
 8 -- there were two notebooks --  
 9 Q Okay.  
 10 A -- two very similar-looking notebooks,  
 11 but the other one was for vendors that -- like Frito  
 12 Lay. The Frito Lay guy, he would come in, he would  
 13 sign his name, he would put his time, and then, you  
 14 know, he would go in the store and stock during the  
 15 day and then he would leave, or the milk guy would  
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16 come in or the Coca-Cola guy, but that was in a  
 17 different book.  
 18 This was -- because our book was thick  
 19 and had a bunch of junk in it. So this was the  
 20 cleaning crew book. The other book was a different  
 21 book.  
 22 Q Okay. When you say it was your book,  
 23 you mean it was a Jim's Maintenance book?  
 24 A Yes.  
 25 Q And did --  
 0296 1 A Well, you know, some were -- some were  
 2 -- when we got there, they had some books, but we  
 3 were required to -- I mean, I made books that said  
 4 "Jim's Maintenance" on the front. It said "Jim  
 5 Maintenance," and we tried to get them in all the  
 6 stores.  
 7 So I guess you could say they were our  
 8 books. Most of them -- the majority of them were  
 9 ours.  
 10 Q And, again, you put those books  
 11 together?  
 12 A We were required to do that. We were  
 13 required -- Target had to have this cleaning crew  
 14 sign-in log in the front of that.  
 15 Plus, they would take pictures.  
 16 Whenever we brought a new person in, they would take  
 17 a picture, a photo, they would stick it inside the  
 18 front. They had -- you know, it was their stuff  
 19 inside of the book.  
 20 Q What do you mean by "their stuff"?  
 21 A Target's stuff. Their asset  
 22 protection guy would put -- he would take a picture  
 23 of the crew and put it inside the book.  
 24 Q Okay. And did you maintain the  
 25 payroll time sheets in that book?  
 0297 1 A Yes, ma'am.  
 2 Q Okay. So that was a Jim's document  
 3 maintained --  
 4 A That's our book. It was in the back  
 5 of it, yes.  
 6 Q Okay.  
 7 A The number one thing in the front was  
 8 the Target -- you know, who was in there and who not  
 9 -- who was not. That was in the front.  
 10 Q Did the cleaners have ID --  
 11 A Yes.  
 12 Q -- badges?  
 13 A All cleaners had a Jim's Maintenance  
 14 ID badge.  
 15 Q Did they have any type of Jim's  
 16 Maintenance uniform that they used?  
 17 A Most of them had T-shirts.  
 18 Q And they said "Jim's" on them, the  
 19 T-shirts?  
 20 A Yes.  
 21 Q What color were they?  
 22 A Different colors. Some were white,  
 23 some were blue.  
 24 The main thing they had to have to  
 25 identify themselves was a badge.  
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1 cleaner? Did you ever personally fire a  
 2 cleaner?  
 3 A No.  
 4 Q When you testified earlier about  
 5 having to fire people, you were talking about  
 6 somebody else doing the firing; correct?  
 7 A Directing other people to fire --  
 8 Q Okay.  
 9 A -- yes, ma'am.  
 10 (Defendant's Exhibit No. 3 was  
 11 marked for identification)  
 12 Q (By Ms. Miller) I'm going to show you  
 13 what's been marked as Defendant's Exhibit 3. It's a  
 14 two-page document.  
 15 MR. WILEY: The second and third  
 16 page are exactly the same, so --  
 17 MS. MILLER: Oh, I'm sorry.  
 18 No, no, no. The official Exhibit  
 19 I has one -- okay.  
 20 (By Ms. Miller) Have you seen this  
 21 document before?  
 22 A Yes.  
 23 Q Did you create this document?  
 24 A Pretty much. It was manipulated a  
 25 little bit, but, yes, I created that.  
 0299 1 Q Okay. Tell me what you mean by "it  
 2 was manipulated a little bit."  
 3 A I -- I mean, they got on here and put  
 4 "Target 1944" and changed the font. I didn't have it  
 5 like that.  
 6 But I -- this is -- this is to slide  
 7 into the front of one of these books. That's a front  
 8 page that would slide in here, just like that.  
 9 (Indicating)  
 10 Q Are you talking about the Jim's  
 11 notebook --  
 12 A This --  
 13 Q -- that we've --  
 14 A Yes.  
 15 Q -- referred to earlier today?  
 16 A That we put in all the stores.  
 17 Q Okay.  
 18 A This one page --  
 19 Q The one page --  
 20 A -- would go up front.  
 21 Q Oh, it was the cover for it?  
 22 A It was the cover for this book.  
 23 Q Okay.  
 24 A For a -- not this book, but the book  
 25 that we put in the store.  
 0300 1 Q And the second page, have you seen  
 2 that document before?  
 3 A That's a sign-in log. Now, we kind of  
 4 went to that one. That other one was official, but  
 5 Target would not -- I mean, they -- they didn't --  
 6 those weren't -- like a new store, they might have a  
 7 book of these, a -- you know, a rip-out page.  
 8 They might -- they'll provide these,  
 9 but then they're not -- you know, then they run out  
 10 and they're out. They don't reorder these. They  
 11 don't pay attention to these too much. So then we  
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ended up using those.

Q Okay. And did you create the second page of Defendant's Exhibit 3?

A I don't know. Maybe. I don't know. It doesn't look familiar. I don't think I did that.

Q Do you know if somebody from Jim's created it?

A Oh, you know, I don't know where we got that. We may have got that out of somebody else's book, then copied it, because it was in Spanish and thought it would work better.

Q That -- it works -- yeah. It's not a Target form. I don't think. That's not -- it is not Target for sure.

Q It worked as this whenever Target ran out of those. You had to have something in there to name the people who was in the store. (Indicating)

Q It's confusing. You testified that there was a Jim's cleaner who was fired for eating a hamburger. Who was the -- what store was that?

Q 1785.

Q And do you know who the STL was at that store --

A Margaret --

Q -- at that time.

A I don't remember. Margaret. I think she's still an STL down in San Antonio or Austin, somewhere.

Q Was she actually an STL or was she another level of --

A No.

Q -- Target manager?

A She was the STL.

Q Did you talk to Margaret directly about this cleaner?

A Yes.

Q And what was the cleaner's name?

A Maria. I don't remember her last name.

Q Okay.

A She was a day porter.

Q And tell me what you mean by that.

A They don't have day porters any more. Whenever the stores first opened -- like this was a Super Target in San Antonio. It was the first Super Target, I believe, in San Antonio, or the second one. It was very busy, so they would hire a day porter to walk around during the daytime. She had a Jim's Maintenance vest on, and she would clean the bathrooms.

Q If they would have a spill in aisle

A blah, blah, she would go take care of that.

Q They were busy at that time, and they had the funds to have a housekeeper.

Q But that was a Jim's Maintenance employee?

A Yes.

Q And did you pay the cleaners to do the day porter job?

A Yes, and billed Target -- well, it was

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part -- actually, it was part of the contract. That was part of the contract.

Q Okay.

Q You provided a day porter, at that time, for Super Targets. Then they did away with that.

Q They did away with it altogether or did away with it once the store got up and running?

A Both. They -- they would allow a day porter for the first two weeks of a grand opening of a Super Target, but they eliminated -- later eliminated. There are no day porters in Target. It was a big waste.

Q So now there is no day porters in Target any more.

Q Why are we talking about this? I'm sorry. I didn't mean --

Q The -- you said there was a whole crew fired at one point. Which store was that at?

MR. DEATS: Objection, form.

THE WITNESS: I don't remember. There was a store in Albuquerque where we -- the STL called and said, "I want this crew gone."

Q (By Ms. Miller) Do you know the STL's name?

A No.

Q Did you communicate directly with that STL about that particular crew?

A Yes.

Q Did the STL explain why they did not want that crew at the store any more?

A Performance.

Q Did you move that crew to another store?

A No.

Q Was there a particular reason why you didn't?

A No. I kind of agreed with them.

Q Was there ever a time that you would move a cleaner to another store?

A Sometimes.

Q And who would make that decision?

A The district supervisor would say, "Hey, we can move -- this person can ride with this person" and it's not as easy as all of them driving to the stores so there might be, "Hey, she has moved over here to this apartment complex, she can ride over here and then I've got a person -- he's got a cousin that can do this, this and this."

Q The district supervisor was in charge of that and then he would run it through his regional.

Q On the chemical budget, you testified that, if you went over the budget, somebody from Target would communicate that to you; is that correct?

A Well, it was communicated every month --

Q Okay.

A -- back to you, where you were with

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your budget.

Q And is that via that Plaintiff's Exhibit 9 --

A Yes.

Q -- the brand score card report?

A Yes.

Q If you went over budget, did Target ever, in fact, charge you for it?

A Not that I know of.

Q I -- I take it you have never been employed by Target directly; is that correct?

A Correct.

Q And were you ever in charge of completing a performance review for an STL?

A No.

Q Did you ever see a performance review for an STL?

A No.

Q So you're -- you're not aware of what factors an STL is reviewed by --

A No.

Q -- correct?

A Yes. That's correct.

(Defendant's Exhibit No. 4 was marked for identification)

Q (By Mr. Deats) Let me show you what's been marked as Defendant's Exhibit 4.

Q It is a four-page document. Do you recognize that document?

A Yes.

Q What is the first page of Defendant's Exhibit 4?

A Application and badge sheet might be call that.

Q And did you create that document?

A I don't remember. Probably.

Q No. I don't know. I don't know if I did that one or not.

Q Okay. But am I correct -- that is an application for employment with Jim's Maintenance; correct?

A Yes.

Q I did not make this.

Q The second page of Defendant's Exhibit 4, have you seen that before?

A Yes.

Q And what is that?

A Request for criminal record check.

Q And did you conduct criminal record checks on the Jim's Maintenance employees?

A No, I did not.

Q Did -- do you know if anybody else did on Jim's behalf?

A I don't know if they did or not. I wasn't in charge of that.

Q Did -- who was in charge of that?

A I guess -- I don't know. Bryan, maybe.

Q And the third page of Defendant's Exhibit 4, do you recognize that?

A Contract Initial Agreement.

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Q And I -- I appreciate that you can read the title of it. My question was: Do you recognize that document?

A This -- that's the first time I have seen this document.

Q Okay. And the last page of Defendant's Exhibit 4, have you seen that document before?

A That's just -- yes. Yeah, that's standard, I guess.

Q What is that?

A I-9.

Q And that's --

A I think.

Q Is it a -- that may be --

A This is a W-9.

Q Is it a W-9?

A It says Form W-9, that I can read.

Q Okay. Do you know if the -- Jim's Maintenance completed W-9 for the cleaners?

A I suspect -- I don't know.

Q Did you have any responsibility for providing tax information to the cleaners?

A No, ma'am.

Q Who did that?

A I -- I don't know. I defer that to Bryan or Jim.

Q All right. Well, let's go to Page 3 of Defendant's Exhibit 4. And I know you said you had never seen it before, but, please, take your time to read it.

A Okay.

Q In fact, if you would, would -- would you read the first sentence that starts here?

A "This is a contract/initial agreement between subcontractor and contractor, Jim's Maintenance, to be paid for piecework services rendered by subcontractor for contractor, Jim's Maintenance. Services are performed on a daily basis between the hours of 10:00 p.m. and 6:00 A, seven days per week, at rate of \$750 per two-week" -- do I continue on?

Q No. Thank you.

Q And do you understand what that means?

A Yes. I think I -- yeah.

Q And what does that provision mean to you?

A That means that they were shift pay and they were hired for a period of two weeks -- I mean, not really a shift, like a day, but seven days per week, at a rate of -- yeah. I see what they did.

Q It's not really supposed to be 750 per two weeks. It's probably supposed to be seven days per week, at rate of blank per day, is what it was probably meant to be, but I'm just speculating there.

Q And do you understand that provision to mean that Jim -- Jim's was hiring the cleaners as independent contractors or subcontractors?

A That's what we hired -- yeah. I mean, I think so.

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Q And did you understand that to violate the contract with Target --

MR. PIZZO: Object to the form.

Q (By Ms. Miller) -- that prohibited subcontracting the work?

A No.

MR. PIZZO: Object to the form on the basis of a legal conclusion.

Q (By Ms. Miller) Okay. And -- well, let's look at Plaintiff's Exhibit 4, and, if you would, look at Page 11, which is a document Bates stamped Target ESOP 0140.

Q If you would, look at Paragraph 24. You don't have to read it aloud, but read it to yourself.

A (Complies)

Q What do you understand that provision on Plaintiff's Exhibit 4 to mean?

A That they do not want you subcontracting out without prior approval.

Q Okay. And would that be contradictory with Jim's Maintenance requiring its cleaners to complete an independent or subcontractor agreement?

MR. DEATS: Objection, form.

Q (By Ms. Miller) You can still answer.

A I don't think so.

Q How -- how are those consistent?

MR. DEATS: Objection, form.

Q (By Ms. Miller) You can still answer.

A There are companies that subcontract out -- I don't -- I don't know. We -- I mean, I don't understand the language. I'm not an attorney.

Q I don't understand --

Q Do you know --

A -- the difference.

Q Do you know what "subcontracting" means?

A From those two -- I don't know what's acceptable subcontracting and what is not.

Q You didn't understand what was acceptable under Target's contract with Jim's, or you don't understand what "subcontracting" is at all?

A There are various terms for subcontracting, hiring another company to do something.

Q I don't know. We didn't hire -- you know, we hired -- we hired these people and subcontracted them out individually to do -- perform services.

Q Okay. And my understanding is -- is that practice consistent with the contract that you had with Target, that prohibited --

MR. DEATS: Object to the form.

Q (By Ms. Miller) -- subcontracting?

A It may have contradicted.

MS. MILLER: I would like to take a two-minute break.

(Short Break)

Q (By Ms. Miller) The packet that we were just looking at, marked Defendant's Exhibit 4, do you know who was in charge of maintaining those

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type documents for Jim's?

A Ruth filed them. You know, she put them in the file.

Q I would say Bryan was responsible for making sure that that -- Jim had a role in that, on -- on getting the -- the CPA, I believe, to draw that up. It looks like CPA language.

Q Okay. And -- and when you said "the CPA to draw it up, you're talking about Page 3 of Defendant's Exhibit 4?"

A Yes.

Q Do you know who Jim's Maintenance's CPA was?

A I can't remember.

Q Do you know if Jim's Maintenance provided workers comp benefits if a cleaner were to get hurt on the job?

A I don't know that.

Q At any point were you made aware of Jim's cleaners complaining about their pay?

A No.

Q About the way they were paid or the pay? No.

Q In fact, they loved being paid on those cards, those debit cards -- those paycheck cards.

Q Okay. When you say "they," who are you talking about?

A Cleaners.

Q Did you have conversations with these cleaners where they expressed --

A Just supervisors.

Q Okay. And which supervisor told you that they loved getting paid by the cards?

A The -- whenever they were -- these cards -- when they were deposited, on whatever day that was -- I think it says in here. Paid on the 10th and 25th.

Q They -- it was available that day, on the 10th. It's not like the check was cut on the 10th and then mailed to the supervisors or mailed to their homes, lost, and then -- so, instead of going through the mail, losing checks, when we moved to issuing them a card, they got their money on the 10th and on the 25th.

Q So that was the positive of that.

Q And -- and tell me, again, the name of the Jim's supervisor you say spoke to about this.

A Oh, Andy Ramirez --

Q Do you know where --

A -- Rob Hythen.

Q Andy Ramirez, was he in the --

A He was in the southern region.

Q In Texas; is that correct?

A Yes. Uh-huh.

Q And do you know where he is today?

A No.

(Defendant's Exhibit No. 5 was marked for identification)

Q (By Ms. Miller) I'll show you what's been marked as Defendant's Exhibit 5. Have you seen

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Defendant's Exhibit 5 before today?

A I -- probably. It was e-mailed to me, so yes, I would have read it.

Q Okay. And what was your understanding of this e-mail?

A Let me read the bottom here.

Q Okay. What's the question?

A First of all, who did you receive that e-mail from?

A That is from Becky Nielsen to me.

Q Okay. And -- and what is Becky telling you in that e-mail?

A She is basically --

MR. DEATS: Objection, form.

Q (By Ms. Miller) You can go ahead and answer.

A She forwarded an e-mail. She received an e-mail from a -- the ETL, the logis -- well, the logistics guy from 1785.

Q He sent it to Richard Sloan, which Richard Sloan is in Building Service. He's a field guy.

Q He doesn't have anything to do with this, so he just forwarded it to Becky, it looks like.

Q What was the subject matter of this e-mail?

A Well, this guy -- this logistics guy at 1785 is a very busy person, supervising our crew, as it appears, and thinks that people weren't paid, he thinks that people's pay were cut, he thinks that we're not doing a very good job taking care of our scrubber, and he thinks that we're not doing a very good job taking care of our buffer.

Q Okay. So that e-mail from Becky was --

THE VIDEOGRAPHER: Excuse me.

Q We've got a phone.

(Short Break)

Q (By Ms. Miller) Read me the first sentence of Becky's e-mail to you.

A "Trent: Here is the e-mail that precipitated my e-mail to you concerning the alleged nonpayment of workers."

Q Did you receive other e-mails from Becky about alleged nonpayment?

A Yes. She would send something similar to this. She was copying -- if somebody sent this to her, she would forward it to us, "Hey, what's going on here?"

Q Okay. So, at some point, you were made aware of Jim's cleaners complaining about their pay?

A Oh, well, yes. I mean, like this -- there were mistakes -- we had 300 workers, and if somebody, you know, started on -- in May, they thought they -- at the end of May, on the 30th, when the other crew -- the rest of the crew was paid, they think, "Hey, how come I didn't get paid?"

Q Well, because we just turned it in on

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the 16th. It's got to be processed and it will be paid.

Q So there was always confusion on how much -- "why wasn't I paid?"

A "Well, you're new. You will get yours at this time. We mailed you the check," answering questions like that, yes.

(Defendant's Exhibit No. 6 was marked for identification)

Q (By Ms. Miller) I'm going to show you what's been marked as Defendant's Exhibit 6. Do you recognize that?

A It's from me to Ruth.

Q And were you forwarding her, Ruth, an e-mail that you had received from Ted Fischer at Target?

A It appears that Ted Fischer sent it to all of the cleaning companies, all 25 of us, or whatever.

Q Okay. And were you forwarding this e-mail to Ruth Talent that you had received from Ted Fischer at Target?

A Yes, "Ruth, will you print this out for Jim to sign?"

Q Okay. And what was the subject matter of Ted Fischer's e-mail to you?

A I -- illegal workers, it looks like.

Q I'm sorry. I will have to share with you. We don't have enough copies.

A "In light of the recent Wal-Mart settlement with the federal government regarding the employment of illegal workers by its cleaning contractors, I want to reiterate our expectations of you."

Q Okay. And it had an attachment of a certification. Did you ever -- and I know we don't have it here.

Q Did you ever complete any kind of certification of compliance with laws on behalf of Jim's Maintenance?

A I don't believe so. I don't think so.

Q You testified earlier today that Jim's Maintenance had declared bankruptcy; is that correct?

A No. I shouldn't have said that.

Q We were bankrupt. "Bankruptcy" seems like a very formal government, legal term. So "bankrupt" would be more of a general "we don't have any money" term.

Q So "bankruptcy," I need to take back.

THE WITNESS: Craig, can you fix that for me? Bankrupt, we were bankrupt.

Q (By Ms. Miller) And has any type of cleaning services replaced Jim's Maintenance for Target?

A No. Just as Jim's Maintenance.

A No.

Q Did you ever say to another Jim's Maintenance employee that you preferred Mexicans because they did their jobs and kept their mouth shut and didn't cause trouble?

A No.

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22 Q Completely did not say that?

23 A No. That doesn't -- I didn't say

24 that.

25 MS. MILLER: I'll pass the

0320 witness.

1 MR. PIZZO: Do you want to go me

2 first or do you want to go next?

3 MR. DEATS: You can.

4 MR. PIZZO: Okay. A couple of

5 questions.

6

7 CROSS EXAMINATION

8

9 BY MR. PIZZO:

10 Q You met with, I think, Mr. Deats and

11 one of his associates a couple of months ago; right?

12 A Yes.

13 Q Okay. Had you -- did you know about

14 the Target lawyers meeting with the Jim's people

15 sometime last year or months ago?

16 A I don't -- probably.

17 Q Were you there --

18 A I don't remember.

19 Q -- when the -- I think maybe it was

20 these two lawyers here. I don't know.

21 A No.

22 Q I wasn't there.

23 A No.

24 when they were copying everything?

25 yeah.

0321 A Yeah. No. I knew they were down

1 there, copying a bunch of stuff, but I -- I didn't

2 know --

3 Q Okay. Do you know that they were

4 talking to Jim and some employees of Jim's

5 Maintenance?

6 A No. I'm not aware of any of that.

7 Q Well, they didn't ask you about their

8 meeting with Jim's. They just asked about your

9 meeting.

10 A Okay.

11 Q Okay. I just wanted to be fair that

12 they also had meetings with Jim's.

13 A Okay.

14 Q And it may have been some other

15 lawyers for Target. I don't know if it's these two

16 sitting across the table from me or not, but -- so

17 your job, really, was to try to service Target; is

18 that right?

19 A I was -- yeah. That's pretty much.

20 Q Okay. And you don't work for Jim's

21 any more; correct?

22 A Correct.

23 Q When is the last time you worked for

24 Jim's Maintenance?

0322 A Probably April of '06.

1 Q Did you get fired or terminated or

2 laid off or whatever?

3 A No. I told Jim -- he didn't have to

4 fire me. I quit.

5 Q Did you say --

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7 A I did it, so he didn't have to say it.

8 But I didn't get my last paycheck, either, so --

9 Q How did you communicate with Target?

10 you, apparently, mentioned that you talked to people

11 on the phone; is that right?

12 A Yes.

13 Q Okay.

14 A Phone and e-mail --

15 Q E-mail?

16 A -- communication.

17 Q And you've talked to people in

18 person --

19 A Yes.

20 Q -- with Target, as well?

21 A Yes, I have.

22 Q Okay. And about the bidding process,

23 you said, real early in this deposition, that you

24 only can lower your bid.

25 Now, I'm a little bit confused, and --

0323 and what I may be understanding -- and correct me if

1 I'm wrong -- is that when you do the first bid, it

2 can be higher than what you're currently paid or it

3 could be higher, but once you do the first bid, then

4 every bid after that has to be lower?

5 A Yes.

6 Q Is that correct? Am I --

7 A Yes. Your initial bid -- you can

8 never go higher than your initial bid. Not what

9 you're contracted at currently, but your initial bid.

10 Q Okay. But your initial bid can be

11 higher or lower than what you're contracted with?

12 A Yes.

13 Q Okay.

14 A That's correct.

15 Q Okay. I'm going to go real quick

16 through the organizational chart, because I don't

17 know if I quite understand it, for Jim's.

18 There's the officers, which were Jim

19 and Bryan and some other people, apparently; right?

20 Jim and Bryan and Jimmy, maybe?

21 A I don't know --

22 MR. JIM FUNDERBURGH: Joyce.

23 THE WITNESS: -- if Jimmy was an

24 officer.

0324 MS. MILLER: And --

1 THE WITNESS: Joyce -- Joyce was

2 an officer.

3 MR. PIZZO: Hold on, Jim. You

4 can't talk right now.

5 Q (By Mr. Pizzo) And, then, where were

6 you in that --

7 A I was right below them.

8 Q Okay. Then, below them would be who

9 -- or below you, I'm sorry, would be, what, regional

10 people?

11 A Yes.

12 Q And who were the regional people?

13 A In the north, it was Rob Mythen, and

14 in the south, it was Brandon Stewart, who was later

15 replaced with Alex Ramirez.

16 Q Okay. And, then, underneath regional

17 Page 134

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18 is district people?

19 A Each one of those guys had district

20 supervisors that had about eight stores each.

21 Q Okay. And, then, underneath the

22 district people were supervisors?

23 A were stores. They -- yeah.

24 Q Well, they were the leads? Is that

25 what you called them?

0325 A Yeah. You would have a crew leader in

1 each store.

2 Q Okay. And underneath that, of course,

3 is the workers; right?

4 A Right.

5 Q Okay. And, then, Bryan and Jimmy were

6 kind of the officers that would kind of watch the

7 different regions; right?

8 A One was responsible for the north and

9 one was for the south?

10 A Yes. Uh-huh.

11 Q Okay. Do you know why the -- Target

12 would put all of these documents -- a lot of these

13 documents in Spanish?

14 A Because -- I mean, total speculation

15 on my part, but 99 percent of the employees that

16 clean Targets are Spanish people.

17 Q Do you know when Target last did their

18 own in-house cleaning?

19 A No, I do not know. Mike Bell said

20 that they had tried in the '70s, or something, in

21 a conversation I had with him.

22 Q But you did have some conversations --

23 A Well, I mean, just socially, we would

24 see him in -- at these meetings, and he explained

0326 that -- and he was familiar with Oklahoma City.

1 I was -- I was just -- Jim was talking

2 to him more in depth. I was just standing there.

3 Q Were you the go-to guy from Target?

4 A I tried to really talk with somebody about

5 some issue at Jim's, were you the person they would

6 contact, as opposed to Bryan or Jimmy?

7 A Yes. I was their -- yes. I was their

8 representative.

9 Q Okay.

10 A All these e-mails have me on them.

11 Bryan was like an owner.

12 Several of these guys have owners. Do

13 you know what I mean? That they would -- I'm

14 pointing to Defendant's Exhibit 6, that has all the

15 e-mails of the 20 or so cleaners.

16 Some of them have a lead guy, who is

17 in charge of representing Target to them.

18 Q Okay.

19 A So Bryan signed the contracts.

20 Q Okay. Yeah. Why did you leave Jim's?

21 what was the reason?

22 A Jim couldn't pay me any more. Total

23 speculation on my part, but I believe he did not have

24 the funds to pay me any more.

0327 Q And that was because of what reason,

1 if you know?

2 Page 135

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3 A Target withheld final payment.

4 If they would have paid the last bill,

5 then we would have -- we had plans to go on, but then

6 we owed everybody under the sun when we didn't get

7 our final payment.

8 Q Do you know whether Jim filed

9 bankruptcy personally or not?

10 A I do not know that.

11 MR. PIZZO: I pass the witness.

12 Anything?

13 MR. HURTT: No.

14 MR. PIZZO: We'll pass the

15 witness.

16

17 REDIRECT EXAMINATION

18 BY MR. DEATS:

19 Q Did Target, to your knowledge, ever

20 show any interest in reviewing your pay records or

21 the records showing the hours that your employees

22 were working?

23 A Target did not.

24 Q Do you have Defendant's Exhibit 4 in

25 front of you?

0328 A Yes.

1 Q If you know, were any of the documents

2 reflected in Defendant's Exhibit 4 -- were they

3 shared with Target?

4 A They were shared with

5 Price-waterhouse, I believe.

6 Q So you would have shared with

7 Price-waterhouse documents like Page 3 of Deposition

8 Exhibit 4?

9 A I do not know. I did not provide them

10 with anything.

11 I believe -- they came in. They were

12 supposed to look at 50 employees' files. So they

13 could have looked at this -- I mean, a personnel

14 file.

15 Q And were these documents maintained in

16 the employee files?

17 A Yes.

18 Q So if Price-waterhouse looked, for

19 example, at Page 3 of Deposition Exhibit 4, they

20 would have seen that employees were scheduled to work

21 10:00 p.m. to 6:00 a.m., seven days per week,

22 according to the document; correct?

23 A Yes.

24 Q After the audit by Price-waterhouse,

0329 did anyone at Target contact you to request that you

1 change your employment practices in any way?

2 A Not that I know of. They would have

3 contacted me.

4 Now, you mentioned that you had been

5 in several stores while overnight cleaning crews were

6 doing their work, in the past; correct?

7 A Yes.

8 Q And you tried to identify a lot of

9 those for Ms. Miller?

10 A I tried to quickly come up with --

11 Q In addition to that, did you receive

12 routine reports from your district supervisors about

13 Page 136

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14 what was happening in the stores that they  
15 supervised?  
16 A (No verbal response)  
17 Q Did supervisors tell you what was  
18 going on in the stores?  
19 A No, not -- not -- not written, not in  
20 any written form. They didn't have e-mail. They --  
21 Q And I'm not talking about --  
22 A -- didn't send --  
23 Q -- written form.  
24 A -- fax anything in. They --  
25 Q Did you talk to your district  
0330 supervisors?  
2 A Yes. I spoke -- and I visited. I  
3 flew out there and I -- we would visit stores. I  
4 would fly in, we would hit two or three or four or  
5 five stores, and then I would go visit the next  
6 district supervisor, hit two or three, four, five  
7 more stores.  
8 Q And did -- if you had a problem, for  
9 example, that a store manager was holding over  
10 employees after their normal quitting time, are these  
11 the sorts of reports that you routinely received from  
12 your district supervisors?  
13 A Those are the comments, yes.  
14 Q And those were reports that you  
15 received from the district supervisors in the normal  
16 course of your business as a manager for Jim's  
17 Maintenance, were they not?  
18 A That is correct.  
19 Q Do you know who sent the Johnson's  
20 representative to Jim's Maintenance to train you on  
21 the proper way to deal with the floors?  
22 A Chris --  
23 MS. MILLER: Object to the form.  
24 THE WITNESS: -- Carlson.  
25 Q (By Mr. Deats) I'm sorry.  
0331  
1 A Chris Carlson.  
2 Q You were asked about whether or not  
3 many of the employees were able to speak English.  
4 Do you know whether or not some of the  
5 Target managers were able to speak Spanish?  
6 A Some in Texas.  
7 Q And was that more -- I'm sorry. You  
8 said --  
9 A In -- in the southern regions, where  
10 there are more Hispanic people.  
11 Q For example, in San Antonio and  
12 Austin, you had more Target managers that spoke  
13 Spanish, didn't you?  
14 A That's correct. This guy who sent  
15 that e-mail, he speaks Spanish. That's why he was  
16 supervising that group.  
17 Q And you indicate that, during the  
18 bidding process that occurred in '05, you were asked  
19 some questions by Target.  
20 A Specifically, I believe you testified  
21 they asked "how much do you make" and "what is your  
22 profit margin?"  
23 A Yes.  
24 Q Do you recall being asked those kinds  
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10 A I don't even know how old it is.  
11 Q But my question -- you look at the  
12 first bullet point, "Target work shift begins at  
13 10:30 p.m. and ends at 6:00 a.m.?"  
14 A Yes.  
15 Q Did Jim's really have control of when  
16 the work shift --  
17 A No.  
18 Q -- began?  
19 A No.  
20 Q Did Jim's really have control of when  
21 the work shift ended?  
22 A No, not at all.  
23 Q Who was making those decisions?  
24 A Target.  
25 Q If Jim's was unable to meet the  
0335 requirements of its shift pay policy, what was the  
1 reason for that inability?  
2 A Target managers.  
3 Q And was that occurring on a frequent  
4 or infrequent basis, that Target managers were taking  
5 steps that prevented implementing this policy?  
6 A Frequent.  
7 Q And when it happened that Target  
8 managers interfered with your ability to keep to this  
9 policy, did you have any ability to control that?  
10 A No.  
11 Q You were asked whether or not you  
12 personally fired cleaners, and you said that you did  
13 not.  
14 A Did you direct others in your company  
15 to fire cleaners?  
16 A Yes.  
17 Q And did you do that at the behest of  
18 Target managers?  
19 A Yes.  
20 Q Defendant's Exhibit 5 is a copy of a  
21 complaint that you got from a Target manager. Did  
22 you get complaints from Target managers on more than  
23 one occasion?  
24 A Oh, yes.  
0336  
1 Q This is what you were talking with me  
2 earlier about, that you got, oftentimes, multiple  
3 complaints in a single day?  
4 A Yes, but -- but those were through  
5 BSOC mostly. I'm saying those were work orders.  
6 This guy did not follow the proper  
7 procedure. He went through Building Services, his  
8 local guy. His local guy forwarded it up to Becky.  
9 Becky forwarded it to me, "what's  
10 going on with this? Get this taken care of."  
11 Q But you got other complaints from  
12 Target managers frequently?  
13 A Thousands. Thousands.  
14 Q Do you -- do you recall whether or not  
15 you had multiple complaints from your employees with  
16 questions about when and how they were paid?  
17 A No, not -- not -- ask -- ask the  
18 question again.  
19 Q This particular -- Defendant's Exhibit  
20 5 --  
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25 of questions by Target in '05?  
0332  
1 A '05? I don't think it was in '05. It  
2 was when we went --  
3 Q In connection with the negotiation of  
4 the '05 contract.  
5 A No. They did not ask it then.  
6 Q When do you recall them asking those  
7 questions?  
8 A They asked it in '01, whenever we --  
9 would it be that contract? Is that the one -- '01?  
10 Q The '01 contract is --  
11 A Yeah.  
12 Q -- Plaintiff's Exhibit --  
13 A It was prior to this one here,  
14 Plaintiff's Exhibit 2. We went up there and Chris  
15 Carlson asked us -- was asking us about our business,  
16 "how many supervisors do you have, how many do they  
17 -- how many stores do they cover, just gathering all  
18 kinds of information, and then, asked us, "what is  
19 your profit margin?"  
20 He asked -- I mean, I was told by two  
21 other contractors that he was -- he asked the same  
22 questions. Everybody who came in -- there were  
23 meetings. We -- there were -- there were three or  
24 four that day.  
25 When we came in to sign in, we could  
0333 see there was another contract before us scheduled  
1 and there were contractors after us.  
2 A So all of the subcontractors -- the 25  
3 that were awarded stores, all came and all had the  
4 same meeting with Chris Carlson and Mike Hannasch,  
5 and were asked, I -- the same questions.  
6 I was not there. I'm not a fly on the  
7 wall, but after talking to the other subcontractors,  
8 they said they were asked -- "Did he ask you how much  
9 profit you make?"  
10 A Yes, he asked me how much profit I  
11 made.  
12 A Specific one was the guy in -- one  
13 of these -- one of the subs is a publicly-traded  
14 company, and he had to identify that, "We are a  
15 publicly-traded company, and we always -- we must  
16 require a 15-percent profit margin," or something  
17 like that.  
18 Q Do you have Defendant's Exhibit 2 in  
19 front of you?  
20 A Yes.  
21 Q Now, this was a maintenance shift pay  
22 policy that was implemented by Jim's Maintenance?  
23 A Apparently, yes.  
24 Q And did you play any role in  
0334 implementing this policy?  
1 A No.  
2 Q As a practical matter, was Jim's able  
3 to hold to this policy with regards to the Target  
4 stores that it cleaned?  
5 A I suspect that that's -- that was what  
6 we did. I didn't draw this paper up or have people  
7 sign it. I --  
8 Q I understand.  
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21 A Yes.  
22 Q -- is a pay complaint?  
23 A Yes.  
24 Q Was that type of pay complaint  
25 received by you frequently?  
0337  
1 A Yes. This is a -- you know, one of a  
2 kind -- you get these all the time from a new person  
3 starting, when are they paid, "I am supposed -- how  
4 come I don't have a card? They have a card. How  
5 come I didn't get paid on the 1st?"  
6 "Because you just turned your  
7 paperwork in."  
8 "Oh, you shorted me a paycheck."  
9 "No. We paid you for your very first.  
10 Now, you're getting paid -- you know, you will get  
11 paid in -- as it's turned in again."  
12 These are just -- these are minor --  
13 this isn't very -- I mean, this is a good example of  
14 -- of not very big problems.  
15 This guy drives me nuts, this -- this  
16 logistics guy. He -- this was not the only e-mail.  
17 He sent e-mails all the time.  
18 I mean, most of these are explainable.  
19 Target shoes, walking around, leaving black marks, so  
20 our guys -- which we had a good crew. You would go  
21 down there and visit. This store just looked  
22 fantastic. If you looked at the records and saw the  
23 scores that 1785 got, they would be all green. The  
24 store looks good.  
25 This guy is a problem, the logistics  
0338 guy, in this situation. So --  
1 Q Do you recall the name of the  
2 logistics' guy?  
3 A Jim might be able to.  
4 Q There is a name, Oscar, with a line  
5 drawn --  
6 A Oscar. Oscar. Oscar.  
7 Q Does that ring a bell?  
8 A I don't think this was Oscar. It  
9 might have been. Oscar worked there. Yeah, it may  
10 be Oscar.  
11 Q And was Oscar a Target employee?  
12 A Yes. Oscar is a Target employee.  
13 A Oscar was in charge of one area, but  
14 the other, I think, who wrote this, is the -- is --  
15 is -- was the other guy. I don't think it was Oscar  
16 who wrote that.  
17 MR. DEATS: Pass the witness.  
18 MS. MILLER: It's my turn.  
19 MR. PIZZO: Is it my turn.  
20 MS. MILLER: It's my turn, I  
21 think.  
22  
23  
24  
25  
0339 BY MS. MILLER: RECROSS EXAMINATION  
1 Q While we're on Defendant's Exhibit 5,  
2 did you get pay complaints from -- or complaints that  
3 Jim's cleaners were making about their pay through  
4 Target -- through e-mails from Target, or did you get  
5 those from a different source?  
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6 A Most of the time through Target.  
7 Q And they were generally sent by  
8 e-mail?  
9 A Yes.  
10 Q And this was different from the 10 to  
11 30 BSOC work orders you would get a day?  
12 A Yes. No, those were not 10 to 30  
13 payroll problems.  
14 Those were, "They didn't clean the  
15 bathroom. They didn't pick up the front. They  
16 didn't empty the trash."  
17 Q If I may -- we don't have an extra  
18 copy.  
19 A Yes.  
20 Q Did you consider pay complaints to be  
21 little matters?  
22 A No. No. You would take something  
23 like this -- I would fax it, down to Brandon, and I  
24 would say, "Look into this."  
25 And, then, it looks like he faxed it  
0340 back, "Jesus Huerta says he did not" -- I can read --  
1 so this was from Brandon, telling us what happened,  
2 answering this.  
3 Q Okay. The Price-Waterhouse-Cooper's  
4 audit that took place, that was in March of 2006; is  
5 that correct?  
6 A Probably.  
7 Q Well, it was just prior to the  
8 contract ending with Target; correct?  
9 A Yes.  
10 Q Did the Johnson's representative come  
11 to Jim's Maintenance headquarters or to a Target  
12 store?  
13 A Both.  
14 Q How many employees -- cleaners, that  
15 is, would you say you directed to be fired?  
16 A I don't know.  
17 Q I mean, you've -- you've told us about  
18 the -- I'm not trying to be flippant, but the  
19 cheeseburger person and the crew --  
20 A Yes.  
21 Q -- in Albuquerque.  
22 Any others come to mind?  
23 A I need some time to think about it.  
24 Probably 30 or 40 people.  
25  
0341 (Short Break)  
1 Q (By Ms. Miller) Was there anything  
2 that prevented Jim's from having different cleaners  
3 clean a particular Target store in a particular week?  
4 A So -- and that may be confusing, but  
5 my understanding from your testimony was there would  
6 be -- the same crew would clean a store for a  
7 particular week?  
8 A Yes.  
9 Q Okay. That -- the same three people,  
10 if you will, would clean the store for the entire  
11 week?  
12 A Sometimes.  
13 Q Was there anything that prevented  
14 Jim's from having a different set of three people  
15 complete the cleaning for the week?  
16

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17 A No.  
18 Q Did you talk to Mike Bell personally,  
19 ever?  
20 A I was around -- it was a social  
21 atmosphere, and he was talking to Jim and I was  
22 around. He wasn't talking to me, I don't believe.  
23 Q And I must --  
24 A It was three or four years ago. He's  
25 a neat guy. I stood beside him. He -- I was  
0342 listening.  
1 Jim can go into, "I said that Target  
2 experimented in cleaning stores in the '70s," and you  
3 can ask Jim more about that --  
4 Q Okay.  
5 A -- or you don't have to.  
6 Q And, Mr. Smith, you have been great  
7 and it's been long day, but my question was: Did you  
8 ever talk to Mike Bell, personally? Yes or no?  
9 A Yes.  
10 Q Okay. When did you talk to him  
11 personally?  
12 At this meeting. (Indicating)  
13 Q And you're pointing to --  
14 A I'm sorry. June 11th through 13th,  
15 2002, in Minneapolis.  
16 Q Okay. You testified that 99 percent  
17 of the individuals who clean Target stores are  
18 Hispanic.  
19 Q On what are you basing that statement?  
20 A That maybe one percent are not.  
21 Q Are you familiar with all of the  
22 individuals who clean Target stores?  
23 A No.  
24 Q Okay. So you don't really know that?  
0343 A Just all the owners.  
1 Q I'm sorry?  
2 A I'm familiar with all of the people  
3 who own and clean stores in this time period.  
4 Q Okay. And this is for one particular  
5 region of the country, not the Target stores across  
6 the country; correct?  
7 A No. That's all the -- every -- these  
8 -- all the Target stores in the country are cleaned  
9 by these guys, in 2005. These are all the cleaners.  
10 (Indicating)  
11 Q And you know the -- and you're  
12 referring to Defendant's Exhibit 6.  
13 Q You're saying that you know the owners  
14 of every single one of the cleaning contractors  
15 that's listed here and you know the composition of  
16 all of their work force, such that you could testify  
17 that 99 percent of the people who clean Target stores  
18 are Hispanic?  
19 MR. DEATS: Objection, form.  
20 THE WITNESS: No. I -- I would  
21 just bet that that's the case.  
22 Q (By Ms. Miller) Were you aware that  
23 the attorney for Jim's Maintenance, Phil Hurtt, was  
24 present the entire time that my colleague, David  
0344 wiley, and I were at Jim's Maintenance, making copies  
1

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2 that were responsive to the subpoena we issued?  
3 A I apologize. I -- I -- I didn't catch  
4 the question.  
5 Q Okay. Were you aware that Phil Hurtt,  
6 who is present today, the counsel for Jim's  
7 Maintenance, was present the entire time that my  
8 colleague, David Wiley, and I were present at Jim's,  
9 looking through documents for -- pursuant to the  
10 subpoena?  
11 A I'm not aware of that.  
12 Q Okay. We didn't see you up there that  
13 day; correct?  
14 A No. No.  
15 Q Okay.  
16 A I was not there. I don't know -- I  
17 heard that they were up there. That's all. I was  
18 not there.  
19 Q Okay. And you said you resigned your  
20 employment with Jim's Maintenance?  
21 A Kind of. Yes, I resigned. I said --  
22 Q Are you still employed with Jim's  
23 Maintenance?  
24 A No. No.  
25 Q Were you fired from Jim's Maintenance?  
0345 A No.  
1 Q Did you quit your employment with  
2 Jim's Maintenance?  
3 A I guess, yeah. I said, "Jim, I'm  
4 going to quit. You don't have to fire me."  
5 Q When did that happen?  
6 A I don't remember. Sometime in May --  
7 April, May. Pretty unofficial.  
8 MS. MILLER: I don't have  
9 anything else.  
10 MR. PIZZO: Around the horn we go  
11 again.  
12 RECROSS EXAMINATION  
13 BY MR. PIZZO:  
14 Q Two questions. Do you know why people  
15 that worked for Jim's Maintenance is complaining  
16 about wages to Target?  
17 A No.  
18 Q Did they think they were working for  
19 Target, maybe?  
20 MS. MILLER: Object to the form.  
21 Q (By Mr. Pizzo) Do you know?  
22 A I don't know. I know that some had  
23 very close relationships with our people.  
24 Q But doesn't -- when -- when somebody  
0346 has got a problem, you go to your employer, don't  
1 you?  
2 A Yes.  
3 Q Okay. But they were going to pay --  
4 about pay issues and they're talking to Target  
5 people; is that right?  
6 MS. MILLER: Object to the form.  
7 Q (By Mr. Pizzo) Is that right?  
8 A Yes.  
9 Q Okay. Do you know why Target  
10 Corporation decided to go hire this big accounting  
11 firm called Price-Waterhouse and audit the company  
12

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13 called Jim's Maintenance?  
14 A No.  
15 Q Have you got an opinion about it?  
16 MS. MILLER: Object to the form.  
17 THE WITNESS: I don't, no. They  
18 -- they notified us that they were going to send  
19 Price-Waterhouse out to all the companies.  
20 Q (By Mr. Pizzo) Do you think they were  
21 doing this just -- and they already had planned to  
22 terminate Jim's? They were just using this as a  
23 subterfuge?  
24 MS. MILLER: I'm going to object  
25 to the form.  
0347 THE WITNESS: Yes.  
1 MR. PIZZO: Okay. That's all the  
2 questions I have.  
3 MR. DEATS: I have nothing  
4 further.  
5 MS. MILLER: And I -- sorry. I  
6 do.  
7  
8 FURTHER RECROSS EXAMINATION  
9 BY MS. MILLER:  
10 Q Your testimony was that you were  
11 informed that Target sent Price-Waterhouse out to  
12 audit all of its cleaning contractors; correct?  
13 A I believe so.  
14 Q Okay. So your attorney's questioning  
15 about the idea that it was set up as a subterfuge to  
16 fire Jim's and only Jim's --  
17 A No.  
18 Q -- wouldn't make sense, would it?  
19 A I believe --  
20 MR. DEATS: Object, form.  
21 THE WITNESS: They fired many  
22 people. They were narrowing it down. They went from  
23 25 contractors to five.  
24 Q (By Ms. Miller) You said they went  
0348 from 25 contractors to five after the  
1 Price-Waterhouse-Cooper's audit?  
2 A Yes.  
3 Q How -- how do you know that?  
4 A Just from talking to these guys.  
5 Q Your knowledge is from talking to  
6 other cleaning contractors, not from anybody at  
7 Target; correct?  
8 A Correct. All former cleaning  
9 contractors.  
10 MS. MILLER: I don't have  
11 anything else.  
12 MR. DEATS: Nothing further.  
13 MR. PIZZO: Nothing further.  
14 I don't know about read and sign.  
15 Do you want to read it?  
16 You have a right to when it's  
17 written out and you can make changes and all that.  
18 I would recommend you read and  
19 sign it, but that's up to you.  
20 MR. WILEY: Could we get a little  
21 more clarification? You have the right, if something  
22 is incorrect, misspelled, mis -- you can't change  
23

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24 your testimony.  
25 THE WITNESS: Okay.  
0349  
2 your testimony.  
3 MS. MILLER: You can't add to  
4 THE WITNESS: Okay.  
5 MR. DEATS: It's inaccurate to  
6 say he can't supplement his testimony if he remembers  
7 something in addition.  
8 If that's what you're suggesting,  
9 you're just wrong.  
10 THE WITNESS: What's they  
11 question?  
12 MR. PIZZO: They're going to send  
13 you --  
14 THE WITNESS: Oh, they're going  
15 to mail it to me?  
16 MR. PIZZO: Yeah.  
17 MS. MILLER: Yeah.  
18 MR. PIZZO: Then you can make  
19 changes --  
20 MS. MILLER: And then you have a  
21 certain amount of time to --  
22 MR. PIZZO: There's a sheet of  
23 paper that you can -- it's called an errata sheet,  
24 that you can make changes if you think they did it  
25 wrong.  
THE WITNESS: I'm aware of that

0350  
1 fact now. Thank you. \* \* \* \* \*

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J U R A T

1 I, Trent Smith, do hereby state under oath  
2 that I have read the above and foregoing deposition  
3 in its entirety and that the same is a full, true and  
4 correct transcription of my testimony so given at  
5 said time and place, except for the corrections  
6 noted.  
7  
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TRENT SMITH

Subscribed and sworn to before me, the undersigned Notary Public in and for the State of Oklahoma, on this, the \_\_\_\_ day of \_\_\_\_\_, 2007.

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_  
My Commission Number: \_\_\_\_\_

Reported by: Kim Glover, CSR, RPR, RMR

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STATE OF OKLAHOMA }  
COUNTY OF OKLAHOMA } SS.

I, KIM GLOVER, Oklahoma Certified Shorthand Reporter, certify that Trent Smith was by me sworn to testify the truth; that the deposition was taken by me in stenotype and thereafter transcribed, and is a true and correct transcript of the testimony of the witness; that the deposition was taken on the 27th day of August, 2007, at 10:00 a.m., in the City of Oklahoma City, County of Oklahoma, State of Oklahoma; that I am neither attorney for nor relative of either of said parties, or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this, the 5th day of September, 2007.

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Kim Glover, CSR, RPR, RMR  
Oklahoma Certified Shorthand Reporter,  
CSR #201

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WITNESS: TRENT SMITH  
STYLE: IZTEP -VS- TARGET  
REPORTER: KIM GLOVER, CSR, RPR, RMR

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